United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76 5044

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re

INTERSTATE STORES, INC., et al.,

Debtors,

CALIFORNIA WHOLESALE ELECTRIC COMPANY, formerly known as Esgro, Inc.,

Appellant,

-against-

JOSEPH R. CROWLEY and HERBERT B. SIEGEL, as Reorganization Trustees for Interstate Stores, Inc., et al., Debtors,

Appellees.

UNITED STATES COURT OF APPEALS
FILED
FEB 7 1977
DANIEL FUSARO, CLERK
SECOND CIRCUIT

B P/S

On Appeal from the United States District Court
For the Southern District of New York

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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10/22/76	Filed ORDER that the time for Esgro Inc. to serve and file its Answer to the Complaint of the trustees is up to Nov. 8th. So ordered Cannella, J. dated 10/21/76. f.
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10/29/76	Filed AMENDED PROOF OF CLAIM on behalf of Esgro, Inc. f.
11/8/76	Filed ANSWER of Esgro, Inc. to Complaint of Trustees. f.
11/9/76	Filed ORDER TO SHOW CAUSE why an order should not be entered dismissing and striking the amended proof of claim filed herein on behalf of Esgro, Inc. Ret: 11/12/76 at 10:00 A.M. Room 102. So ordered Cannella, J. dated 11/9/76. f.
11/9/76	Filed MEMORANDUM OF LAW IN SUPPORT OF MOTION to Dismiss Amended Proof of claim. Sub. by Shea Gould Climenko & Casey. 330 Madison Ave. New York, N.Y. 10017. f.
11/15/76	Filed Affdvt. of Arthur L. Sherwood. f.
11/15/76	Filed Arthur L. Sherwood's Memorandum of Law in Opposition to Motion to Dismiss Amended Proof of Claim. f.
11/16/76	Filed Reply Affdvt. of Daniel L. Carroll Re: Trustees' Motion for an Order Dismissing the Amended Proof of Claim. f.
11/17/76	Filed ASSOCIATION & SUBSTITUTION OF ATTORNEYS, CLAIMANT Esgro, Inc. (now known as California Wholesale Electric Co.) hereby associates as its counsel in the above-entitled matter the law firm of Gibson, Dunn & Crutcher, Wesley G. Howell, Jr., Esq. & Arthur L. Sherwood, Esq., with the law firm of Weil, Gotshal & Manges in place & stead of Joseph Bernfeld, Esq. dated 10/15/76. So ordered Gagliardi, J. dated 11/16/76.
11/24/76	Filed MEMO ENDORSED in back of paper #381; The amended proof of claim is granted. So ordered Gagliardi, J. dated 11/17/76.

11/26/76	Filed True Copy of ORDER from USCA that stay & execution from the order of the District Court is hereby granted. A. Daniel Fusaro-Clerk 11/23/76.
12/3/76	Filed ORDER TO SHOW CAUSE why Order entered on 11/24/76 Should not be Vacated. So ordered Gagliardi, J. dated 12/3/76. Ret: 12/6/76 at 4:30 PM in Room 618. f.
2/16/76	Filed MEMORANDUM DECISION. The motion to dismiss & strike the amended proof of claim is granted. So ordered Gagliardi, J dated 12/15/76.
12/27/76	Filed NOTICE OF APPEAL to the USCA by Calif. Wholesale Electric Co. f/k/a/ Esgro, Inc. (Esgro) from the order of Gagliardi, J. dated 12/15/76. m/n f.
12/27/76	Filed UNDERTAKING FOR COSTS ON APPEAL in sum of $250.00-National Surety Corp. f.
1/20/77	Filed stipulation and order designating certain documents to be included on the record of appeal.
1/20/77	Filed NOTICE OF ORIGINAL RECORD on Appeal, has been Certified & Transmitted to USCA on 1/20/77.

A 000003

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Attorney for Esgro, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of INTERSTATE STORES, INC., etc., et al. Debtors.	In Proceedings for the Reorganization Nos. 74 B 614-802 inclusive PROOF OF CLAIM ON BEHALF OF ESGRO, INC.

1. The undersigned, Francis J. Esgro, who resides at 2020 Nichols Canyon Rd Los Angeles, California 90046, is the President of Esgro, Inc a California corporation, which corporation is debtor in those certain Proceedings for an Arrangement No. 73-0250 pending in the United States District Court, Central District for California. Esgro, Inc. maintains its principle place of business at 3237 South Garfield Avenue, Los Angeles, California 90040. The undersigned, Irving Sulmeyer, Receiver, who is the duly appointed Receiver in bankruptcy of Esgro, Inc., is authorized as a matter of law to make this proof of claim on behalf of Esgro, Inc. and accordingly joins in said claim. Said Receiver maintains his place of business at 615 South Flower Street, Suite 601, Los Angeles, California 90017.

2. The following bankrupt entities in the above-

entitled proceedings (hereinafter usually referred to jointly as "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in a sum as yet unascertained but estimated to be $35,000,000.00: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation; White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc., a Washington corporation; and White Front Burien, Inc., a Washington corporation; Interstate Department Stores, Inc., a corporation, and Does I through XXX, inclusive.

3. The ground upon which the claim is asserted, and upon which liability on the part of White Front Debtors is claimed, is the following:

(A) Your claimant is informed and believes and thereon alleges that White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate

corporate existence under the circumstances would sanction fraud and promote injustice.

(B) On or about December 1, 1970 Esgro, Inc. and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro, Inc. of residential interior departments in stores operated by each and all the White Front debtors except Interstate Department Stores, Inc. ("Interstate"). Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972, and separate agreements for certain of the White Front Debtor stores in operation were executed (said agreement of December 1, 1970, together with amendements thereto and the separate store agreements are referred to hereinafter as "the agreement, as amended", and copies thereof are attached hereto in chronological order as Exhibits "A" through "G", inclusive).

(C) Pursuant to the agreement, as amended, the parties agreed in part that Esgro, Inc. or its affiliates were granted the right and license to operate residential interior departments concessions in each and all of the stores operated by White Front Stores, Inc., or its subsidiaries, with certain exceptions, for a term extending to 1987 (such stores where such right and license were granted are hereinafter sometimes referred to as the "White Front Stores").

(D) Your claimant is informed and believes and thereon alleges that prior to December 1970 White Front Debtors determined to either sell or close all or substantially all of said White Front Stores under circumstances which would prohibit or foreclose the continued operation of the concession for the operation of residential interior departments in such stores

granted to Esgro, Inc. by said agreement, as amended.

(E) Continually from the date said determination was reached until in or about November of 1972 White Front Debtors concealed and failed to disclose to Esgro, Inc. their said intention to sell or close substantially all of the White Front Stores, and affirmatively represented to and assured Esgro, Inc. that such stores would remain open through the entire term of said agreement, as amended, and further, that additional White Front Stores would be opened by White Front Debtors and would thereupon become subject to said agreement, as amended.

(F) Your claimant is informed and believes and on that ground alleges that in or before early October 1972 White Front Debtors determined and resolved to in fact close and cease business in a majority of the said White Front Stores.

(G) Despite said determination and resolution and its anticipated and expected severe and adverse effect on the business of Esgro, Inc., White Front Debtors failed and refused to disclose to Esgro, Inc. such determination and resolution but rather, in order to induce it to continue to operate departments in all of said White Front Stores until the very day of such stores' closing without adequate or necessary provisions being made for a closing, misrepresented to Esgro, Inc. that, among other things, the said White Front Stores would continue operations and that there had been no resolution or determination made that any of the said White Front Stores would be closed.

(H) In reliance upon the truth of said misrepresentations Esgro, Inc continued operations in said White Front Stores and did not make adequate or necessary provision for

the closing of said Stores.

(I) On or about December 15, 1973 White Front Debtors announced publicly and first informed Esgro, Inc. that White Front Debtors had resolved and determined to close twenty-one of the thirty-three said White Front Stores and that such closings would take place forthwith.

(J) Esgro, Inc. relied upon the truth of the said misrepresentations of White Front Debtors in continuing to expend monies, time and effort in connection with the creation, openings and operations of the said departments in the said White Front Stores, which monies, time and effort would not have been expended had Esgro, Inc. known of the true intentions, determinations and resolutions of White Front Debtors with regard to the sale or closing of the said White Front Stores.

(K) White Front Debtors did, in fact, close said twenty-one stores and as a result of the closing by said defendants of twenty-one of the thirty-three said White Front Stores, Esgro, Inc. could not adequately or economically operate the said departments in only the remaining twelve White Front Stores and could not continue to operate said remaining departments with the remaining threat of closure and claimant was required to cease and discontinue the operation of the said departments in these remaining White Front Stores also.

(L) As a direct and proximate result of the said misrepresentations and fraud of White Front Debtors, their unilateral breach of the said agreement, as amended, and their interferences with the contractual relations of Esgro, Inc. and/or rescission of the said agreement, as amended, Esgro, Inc. has

been injured and damaged in an amount the exact extent of which is uncertain, but which includes the losses and expenses incurred in closing said departments and the lost future profits from the anticipated operations of said departments, and claimant is informed and believes and on that ground alleges that said injury and damage are in the amount of $33,758,972.00.

(M) The acts and omission of White Front Debtors set forth above were done willfully and maliciously, and Esgro, Inc. is further entitled to punitive damages in the amount of $5,000,000.00.

4. No judgment has been rendered on the claim here set forth.

5. No payments on this claim have been made, and accordingly no such payments have been credited or deducted.

6. This claim is not subject to any setoff or counter-claim, however, White Front Debtors contend to the contrary and have alleged that Esgro, Inc. has breached its covenant to pay rent under the amended agreement, which contention is denied by Esgro, Inc.

7. No security interest is held for this claim.

////

8. This claim is a general unsecured claim.

DATED: August 27, 1974

ESCRO, INC., a California corporation

By_____
Francis J. Esgro, Its President

DATED: August 27, 1974

APPROVED AND CONSENTED TO

_____
Irving Sulmeyer, Esquire
Receiver in Bankruptcy of
the Estate of Esgro, Inc.

A 000010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	
Debtors,	
JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,	SUMMONS
Plaintiffs,	
-against-	
ESGRO, INC.,	
Defendant.	

To the Above-Named Defendant.

YOU ARE HEREBY summoned and, pursuant to this Court's order dated October 21, 1976, required to serve upon Shea Gould Climenko & Casey, plaintiffs' attorneys, whose address is 330 Madison Avenue, New York, New York, a motion or answer to the complaint which is herewith served upon you, on or before the 8th day of ~~October~~ November, 1976, and to file said answer or motion with this Court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

YOU ARE HEREBY notified that the trial of the proceeding commenced by this complaint has been set for November 18, 1976 at 10:00 o'clock A.M., in Room 102, United States Courthouse, Foley Square, New York, New York

Date Issued: October 21, 1976.

s/ John M. Cannella
U.S.D.J.

A 000011

TO: Esgro, Inc.
3237 South Garfield Avenue
Los Angeles, California 90040
Attention: Francis J. Esgro

Gibson Dunn & Crutcher
515 South Flower Street
Los Angeles, California 90071

Weil, Gotshal & Manges
767 Fifth Avenue
New York, N. Y. 10022

A 000012

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In re

INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,

Debtors,

JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,

Plaintiffs,

-against-

ESGRO, INC.,

Defendant.

----------X

COMPLAINT

Plaintiffs, JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of the above capitoned debtor complaining of defendant Esgro, Inc. ("Esgro") allege:

1. On May 22, 1974, Interstate Stores, Inc. and 188 subsidiary corporations, including White Front Stores, Inc. ("White Front") filed petitions under Chapter XI, Section 322 of the Bankruptcy Act, and thereafter, an amended petition for reorganization pursuant to the provisions of Chapter X of the Bankruptcy Act was filed on June 13, 1974. Said amended petition was thereafter approved by order of this Court dated June 13, 1974. Pursuant to said order plaintiffs were appointed, have qualified and are now acting as the Trustees of the captioned debtors.

FIRST CLAIM

2. By agreement dated December 1, 1970 debtor White Front and Esgro entered into an agreement amending a prior agreement dated December 1, 1962, as amended, providing for the operation by Esgro of certain leased departments known as Residential Interior Departments within various stores known as White Front Discount Department Stores. Said agreement was amended from time to time and, said agreement as amended, is hereinafter referred to as the Residential Interior Department Agreement.

3. Under the terms of the Residential Interior Department Agreement, Esgro, as compensation for the operation of said Residential Interior Departments, was required to pay to White Front:

(a) 7-1/2 per cent of the gross sales (as defined in said agreement) of said departments ("percentage compensation") for the previous month on or before the 20th day of each month; and

(b) $4.50 per square foot of selling space of all the Residential Interior Departments ("minimum annual compensation") less the amount of percentage compensation theretofore paid during the year, said amount being payable on or before the 25th day of the first month following the end of each license year.

4. The Residential Interior Department Agreement further provided that the minimum annual compensation should be prorated for that portion of a license year for which said license was in effect if a license for a particular Residential Interior

Department either commenced after the beginning of a license year or terminated at a time other than the end of a license year.

5. The Residential Interior Department Agreement further provided that a license year was to be deemed to be a twelve month period ending April 30, except that the first license year would commenced as of the date of the opening of each of said Residential Interior Departments and end the following April 30th, except that, as to the existing White Front Stores, the minimum annual compensation for the Residential Interior Departments located within said stores would commence on June 3, 1971 with respect to some of said stores, on July 3, 1971 as to certain other stores, and on August 2, 1971 as to still other stores.

6. Between July and October 1, 1971, Esgro commenced the operation of Residential Interior Departments in thirty-three White Front Stores and continued operating said departments pursuant to said Residential Interior Department Agreement until December 8, 1972, when the licenses granted pursuant to said agreement were, pursuant to the terms of said agreement, terminated by White Front by reason of Esgro's default thereunder. Subsequent to December 8, 1972, Esgro continued to occupy the areas within the White Front Stores until at least March 12, 1972, when it filed a petition pursuant to Chapter XI of the Bankruptcy Act and continued to conduct retail selling operations in said areas for varying periods extending, in the case of some of said departments, through May of 1973.

7. The Residential Interior Department Agreement also provided that if Esgro remained in possession of the Residential Interior Departments after termination, all of the terms and

conditions of the said agreement would apply.

8. The total selling space contained in the thirty-three Residential Interior Departments was 246,150 square feet and, therefore, the total minimum annual compensation due from Esgro to White Front was $1,107,675.

9. For the license year ending April 30, 1972, Esgro paid White Front a total of $249,747.74 as percentage compensation and for the same period a total of $932,593.28 was due from Esgro to White Front as minimum annual compensation, which amount, less the $249,747.74 in percentage compensation paid, although payable by Esgro to White Front on May 25, 1972, Esgro failed and refused and continues to fail and refuse to pay to White Front.

10. For the period May 1, 1972 through December 8, 1972, the date the licenses granted to Esgro pursuant to the Residential Interior Department Agreement was terminated by White Front by reason of Esgro's defaults, Esgro paid White Front a total of $73,905.94 as percentage compensation and for the same period a total of $958,974.26 was due from Esgro to White Front as minimum annual compensation, which amount, less the $73,905.94 in percentage compensation paid, although payable by Esgro to White Front on May 25, 1973, Esgro failed and refused and continues to fail and refuse to pay to White Front.

11. Subsequent to December 8, 1972, Esgro, despite the termination of the Residential Interior Department Agreement by White Front for Esgro's defaults under said Agreement, continued to operate certain of said departments and between December 9, 1972 and March 12, 1973, the date Esgro filed a petition under Chapter XI of the Bankruptcy Act with the United States District Court for the Central District of California.

12. Esgro has failed and refused to compensate White Front either in the form of percentage compensation or minimum annual compensation for the Residential Interior Departments for the period December 9, 1972 through March 12, 1973.

13. The minimum annual compensation due from Esgro to White Front for the period referred to in paragraph "12", after taking into account those White Front Stores which closed during said period, is $172,302.88.

14. By reason of the foregoing, Esgro is indebted to White Front and, therefore, to the plaintiffs, in the amount of (a) $682,845.54, plus interest from May 25, 1972, in respect of the minimum annual compensation due under the Residential Interior Department Agreement for the period ending April 30, 1972: (b) $885,068.32, plus interest from May 25, 1973, in respect of the minimum annual compensation due under the Residential Interior Department Agreement for the period May 1, 1972 through December 8, 1972; and (c) $172,302.88, plus interest from May 25, 1973, in respect of minimum annual compensation due under the Residential Interior Department Agreement for the period December 9, 1972 and March 12, 1973.

SECOND CLAIM

15. The Trustees repeat and reallege the allegations contained in paragraphs "2" through "8" hereof.

16. During the months of August, September, October, November and December of 1972 and January of 1973, Esgro realized gross sales of $208,572.93, $239,689.73, $469,614.74, $347,853.25, $96,886.11 and $59,957.06, respectively, or a total of $1,422,573.82 in the Residential Interior Departments.

17. Under the terms of the Residential Interior Department Agreement, a total of $106,693.04 was due and owing from Esgro to White Front as percentage compensation in respect of the gross sales referred to in paragraph "16" above, which amount Esgro has failed and refused and continues to fail and refuse to pay to White Front.

18. By reason of the foregoing, Esgro is indebted to White Front and, therefore, to plaintiffs in the amount of $106,693.04.

THIRD CLAIM

19. The Trustees repeat and reallege the allegations contained in paragraph "2" through "8" hereof.

20. Under the terms of the Residential Interior Department Agreement, Esgro was required to reimburse White Front for expenses incurred and amounts paid by White Front on Esgro's account for advertising expenses in respect of the Residential Interior Departments and was required to reimburse White Front for other monies advanced by White Front on Esgro's behalf.

21. Between July of 1972 and January of 1973, White Front advanced a total of $215,494.34 for advertising and other miscellaneous expenses and $2,037.96 in respect of premiums for public liability and property damage insurance on Esgro's behalf, which amount Esgro has failed and refused to pay to White Front although due demand therefor has been made.

22. By reason of the foregoing, there is due and owing from Esgro to White Front and, therefore, to the plaintiffs, a total of $217,532.30.

FOURTH CLAIM

23. Esgro has filed with plaintiffs herein Claim No. 7273A in the amount of $38,758,972.00 in respect of claims allegedly arising out of the execution and performance of the Residential Interior Department Agreement.

24. Plaintiffs object to and seek to expunge said Claim No. 7273A in its entirety, and hereby object to said claim upon the following ground:

(a) Upon information and belief, no false representations were made nor were any relied upon by Esgro, nor did Esgro sustain any damages as alleged in the Proof of Claim.

(b) By agreement dated November 29, 1963, the terms of which were expressly incorporated into the agreement dated December 1, 1970 referred to paragraph 3(B) of the Proof of Claim, it was agreed that the White Front debtors had the right to terminate any of the leases pursuant to which the White Front Discount Department Stores were operating "in good faith for economic conditions or good business reasons." Upon information and belief, the decision to close the White Front Discount Department Stores in December of 1972 and thereafter was made in good faith for economic conditions or good business reasons.

(c) Upon information and belief, no decision was made to sell or close substantially all or a majority of the White Front Discount Department Stores as alleged in paragraphs 3(D) and 3(F) of the Proof of Claim.

(d) Upon information and belief, Esgro was incurring substantial losses as a result of its operation of Residential Interior Departments in the White Front Discount Department Stores and, therefore,was not damaged by their closing.

(e) Upon information and belief, in or about November of 1972, and for some time prior thereto, Esgro and its various affiliates were in breach of various provisions of the agreements pursuant to which the Residential Interior Departments were operated in the White Front Discount Department Stores. By Notice dated November 20, 1972, Esgro was notified by the White Front debtors of its various defaults and demand was made that said defaults be cured within fifteen (15) days as provided in the agreements between the parties. Upon Esgro's failure to cure said default, it was duly notified by notice dated December 8, 1972 of the White Front debtors' election to terminate the license agreements pertaining to the Residential Interior Departments.

25. By reason of the foregoing, the agreement upon which the Proof of Claim is based was lawfully terminated by the White Front debtors. In any event, the claim asserted in the Proof of Claim is precluded by the terms of the agreements between Esgro and the White Front debtors and is without basis in fact or in law.

WHEREFORE, plaintiffs seek the entry of an order (i) directing the entry of judgment against Esgro:

A. On the First Claim, in the amount of:

(a) $682,845.54 plus interest from May 25, 1972;

(b) $1,057,371.20 (less any amount allowed in respect of the Second Claim) plus interest from May 25, 1973.

B. On the Second Claim, in the amount of

$106,693.04 plus appropriate interest.

C. On the Third Claim, in the amount of $217,532.30 plus appropriate interest;

(ii) expunging Claim No. 7273A of Esgro, Inc. in its entirety and (iii) awarding them costs and disbursements of this action and (iv) granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
October 20, 1976.

SHEA GOULD CLIMENKO & CASEY

By_____
A Member of the Firm
Attorneys for the Trustees
330 Madison Avenue
New York, New York 10017
212-661-3200

A 000021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Reorganization Nos. 74 B 614-802
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	Inclusive
	:	AMENDED PROOF OF CLAIM ON BEHALF OF ESGRO, INC. (now known as "California Wholesale Electric Company")
Debtors.	:	Claim No. 7273A

Pursuant to leave having been granted by the Court in the above-entitled matter, California Wholesale Electric Company (formerly known as "Esgro, Inc." and hereinafter referred to as "Esgro") submits the following Amended Proof of Claim with respect to its initial Proof of Claim No. 7273A filed herein on August 27, 1974:

1. The undersgined, Francis J. Esgro, who resides at 2020 Nichols Canyon Road, Los Angeles, California 90046, is the President of Esgro, a California corporation. Esgro maintains its principal place of business at 3207 South Garfield Avenue, Los Angeles, California 90040.

2. The following bankrupt entities in the above-entitled proceedings (hereinafter referred to jointly as the "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in sums set forth in paragraph 3(P) hereof: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation;

White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc., a Washington corporation; and White Front Burien, Inc., a Washington corporation; and Interstate Stores, Inc., a corporation.

3. The grounds upon which this claim is asserted and upon which liability on the part of the White Front Debtors is claimed are the following:

(A) On or about December 1, 1970, Esgro and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro of "Residential Interior Departments" in stores operated and to be operated by the White Front Debtors under the name "White Front." Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972. Copies of this agreement and the various amendments thereto were included, as Exhibits "A" through "G", inclusive, in connection with Esgro's initial Proof of Claim herein.

(B) Pursuant to the said agreement, the parties agreed, among other things, that Esgro (or its affiliates) was granted the right and license to operate Residential

Interior Departments concessions in each and all of the stores operated by the White Front Debtors, with certain specified exceptions, for a term extending to 1987. The stores where such right and license was granted are hereinafter sometimes referred to as the "White Front Stores."

(C) During the course and as a part of the negotiations between Esgro and the White Front Debtors with respect to the said agreement, the White Front Debtors represented to and assured Esgro, among other things, that the operations of the White Front Stores and the "White Front" division of debtor Interstate Stores, Inc. ("Interstate") was a healthy and profitable one and that the White Front Debtors fully intended to maintain and expand their chain of White Front Stores during the full term of the Residential Interior Agreement. In addition, in connection with the said negotiations, the White Front Debtors represented to and assured Esgro that Interstate, the "parent company" of the remaining White Front Debtors, was not in danger of financial difficulty and had a net worth of approximately $79 million. In addition, during and throughout 1970 and thereafter, the White Front Debtors published and made public financial statements of Interstate reporting the operations of Interstate (and all of its subsidiaries) on a fully consolidated basis, which showed a net worth of approximately $79 million and which did not note or indicate any financial difficulty of the White Front stores or their operations.

(D) Esgro reasonably relied upon said

representations, assurances and published financial statements of the White Front Debtors in entering into the said agreement and in making and undertaking its extensive commitments and obligations in connection therewith.

(E) From and after the execution of the said agreement, up until at least November 1972, the White Front Debtors continually represented to and assured Esgro that the White Front operation was a profitable and ongoing business and was not suffering from or incurring any undue financial difficulties. In addition, the White Front Debtors, during this period of time, assured and represented to Esgro that they were not considering the closing of any of the White Front Stores.

(F) Esgro reasonably relied upon these assurances and representations in connection with making its investments in time, money and effort to construct, establish and stock its Residential Interior Departments. Esgro did, in fact, pursuant to said agreement, construct, establish and stock Residential Interior Departments in 33 separate White Front Stores located throughout the States of California, Oregon and Washington and constructed, established and stocked three separate warehouses in support thereof.

(G) The said representations and assurances of the White Front Debtors, and each and all of them, were false and untrue and the White Front Debtors knew or should have known of such falsity in that, among other things:

(i) As of December 1970 (i.e., at or about the time of execution of the said agreement), and all times

thereafter and for a substantial period of time prior thereto, the White Front division of Interstate was incurring increasingly severe operating losses and had become unprofitable.

(ii) The internal operating statements for the White Front division of Interstate available to the White Front Debtors at and just before the said agreement was signed showed results for the first nine months of the then current fiscal year as a loss of approximately $6,325,000, before allocation of New York office overhead and provision for Federal income tax.

(iii) It should have been or was clear to management of the White Front Debtors, beginning sometime prior to December 1970, that the financial operations and results of the White Front Stores were so bad and deteriorating so steadily and rapidly that a substantial number (if not all) of said White Front Stores would have to be disposed of or sold.

(iv) At the time of execution of the said agreement, Interstate did not have a net worth of approximately $79 million. Interstate's net worth was substantially below that sum and Interstate knew or should have known of substantial financial problems which it was incurring and which it would incur.

(H) The White Front debtors did not disclose to Esgro or anyone else and instead concealed and kept strictly within the White Front Debtors' knowledge the poor financial results of the White Front operations. As a result, representations and assurances made to Esgro in connection with the said agreement and Esgro's establishment and maintenance of its Residential Interior Departments were

false and misleading and the financial results of Interstate reported to Esgro and to the public were false and misleading.

(I) Continually up until mid-December 1972, the White Front Debtors concealed and failed to disclose to Esgro their intention to sell or close all or substantially all of the White Front Stores and, to the contrary, affirmatively represented to and assured Esgro that such stores would remain open through the entire term of the said agreement.

(J) In reliance upon the truth of said misrepresentations made to Esgro and of the failure by the White Front Debtors to reveal the true facts Esgro continued operations in said White Front Stores and did not make adequate or necessary provisions for the closing of said stores.

(K) On or about November 19, 1972, Esgro first learned of the true intentions of the White Front Debtors with respect to White Front Stores closings and, in order to minimize and mitigate its losses and damages, Esgro determined to close its Residential Interior Departments and informed the White Front Debtors of such determination.

(L) On or about December 12, 1973, the White Front Debtors announced publicly (and thereby informed Esgro) that the White Front Debtors had resolved and determined to close 21 of the 33 said White Front Stores and that such closings would take place in approximately one month.

(M) The White Front Debtors did, in fact, close each and all of the said White Front Stores by mid-1974.

(N) Had Esgro known the true facts concerning the financial status of the White Front operation and of

Interstate or their intentions, Esgro would not have entered into the said agreement and would not have established, maintained or operated its Residential Interior Departments.

(O) The said acts and conduct of the White Front Debtors, and each and all of them, constitute fraud, misrepresentation (intentional or negligent), breach of contract and interference with contractual relations. In addition, should the Court for any reason decline to allow this claim on those grounds, Esgro is entitled to the allowance of such claim on the grounds of mistake (unilateral or mutual) as to the continued existence and viability of the White Front Stores and their financial condition and on that ground, the said agreement is rescindable and Esgro is entitled to recovery of its losses incurred as a result thereof.

(P) As a direct and proximate result of the said acts and conduct of the White Front Debtors, Esgro has been injured and damaged in the following approximate amounts for which this claim is made:

(i) In the amount of $2,300,000 as a result of expenses incurred and lost in connection with the construction and establishment of the Residential Interior Departments and the three warehouses in connection therewith.

(ii) In the amount of $2,200,000 as the loss incurred in liquidating Esgro's Residential Interior Departments inventory, including handling expenses therefor.

(iii) In the amount of $2,300,000 as the book loss incurred by Esgro as a part of its operational Start-up cost of establishing its Residential Interior Departments.

(iv) In the amount of $24 million as lost reasonably anticipated profits from operations by Esgro of its Residential Interior Departments during the term of the said agreement.

(v) In the amount of $3,200,000 as lost reasonably anticipated profits under the portion of said agreement providing for the supply, by Esgro, to the White Front Debtors, of electrical and plumbing products.

(vi) In the amount of $5 million as additional general damages.

(vii) In the amount of $5 million as exemplary or punitive damages based upon the willful and malicious conduct of the White Front Debtors.

(viii) In an amount which is, as yet, undetermined for costs, interest and attorneys' fees incurred herein and in connection with associated litigation.

(Q) The White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them and with respect to the said agreement that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate existence under the circumstances would sanction fraud and promote injustice. As a result thereof, this claim should be allowed against each and all of the said White Front Debtors, jointly and severally.

4. No judgement has been rendered, as yet, on the claim here set forth.

5. No payment on this claim has been made, and accordingly, no such payment has been credited or deducted.

6. This claim is not subject to any setoff or counterclaim; however, the White Front Debtors contend to the contrary.

7. No security interest is held for this claim.

8. This claim is a general unsecured claim.

DATED: October 21, 1976

CALIFORNIA WHOLESALE ELECTRIC COMPANY (formerly known as "Esgro, Inc."), a California corporation

By _____
Francis J. Esgro, Its President

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:	:	Reorganization Nos. 74 B 614-802
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	Inclusive
Debtors,	:	
JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,	:	ANSWER TO COMPLAINT OF TRUSTEES
Plaintiffs,	:	
-against-	:	
ESGRO, INC.,	:	
Defendant.	:	

Claimant and defendant California Wholesale Electric Company, formerly known as "Esgro, Inc." and referred to hereinafter as "Esgro" responds to the "Complaint" of Joseph R. Crowley and Herbert B. Siegel, Trustees of the above-entitled debtors and admits, denies and alleges as follows:

1. Answering paragraph 1 thereof alleges that it does not have sufficient information or belief to answer the allegations contained therein and on that ground denies generally and specifically each and every allegation contained therein.

FIRST ALLEGED CLAIM

2. Answering paragraphs 2, 3, 4 and 5 thereof, alleges that the Residential Interior Departments agreement referred to and the various prior agreements and amendments thereto were in written form and are the best evidence of

their terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

3. Answering paragraph 6 thereof, admits that between July 1971 and October 1, 1971, Esgro commenced retail operations in Residential Interior Departments in 33 White Front Stores and continued retail operations in those departments until late 1972 and early 1973; except as admitted, Esgro denies generally and specifically each and every allegation contained therein.

4. Answering paragraph 7 thereof, alleges that the Residential Interior Departments agreement referred to is the best evidence of its terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

5. Answering paragraph 8 thereof, denies generally and specifically each and every allegation contained therein.

6. Answering paragraphs 9 and 10 thereof, admits that Esgro paid to debtors as percentage compensation under and pursuant to the agreements between the parties with respect to the Residential Interior Departments a total of $249,747.74 for the period ending April 30, 1972 and $73,905.94 for the periods thereafter; except as admitted, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that the sums alleged or any sum or amount whatsoever is owing or due debtors on account of "minimum annual compensations."

7. Answering paragraph 11 thereof, admits that Esgro maintained retail operations in certain of its

Residential Interior Departments during the period from December 9, 1972 to March 13, 1973 and that on March 13, 1973, Esgro filed a petition under Chapter XI of the Bankruptcy Act with the United States District Court for the Central District of California; except as admitted, Esgro denies generally and specifically each and every allegation contained therein.

8. Answering paragraphs 12 and 13 thereof, alleges that no sum or amount is due or owing to debtors with respect to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

9. Answering paragraph 14 thereof, denies generally and specifically each and every allegation contained therein and further specifically denies that the sums and amounts alleged and that any sum or amount whatsoever is due or owing from Esgro to debtors, or any of them.

SECOND ALLEGED CLAIM

10. Answering paragraph 15 thereof, Esgro incorporates herein by this reference its answer to paragraphs 2 through 8, inclusive, of the Trustees' Complaint herein as though set forth in full.

11. Answering paragraph 16 thereof, admits the allegations contained therein.

12. Answering paragraphs 17 and 18 thereof, alleges that no sum or amount is due or owing to debtors with respect

to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that Esgro is indebted to debtors, or any of them, in the amount alleged or in any amount or sum whatsoever.

THIRD ALLEGED CLAIM

13. Answering paragraph 19 thereof, Esgro incorporates herein by this reference its answer to paragraphs 2 through 8, inclusive, of the Trustees' Complaint herein as though set forth in full.

14. Answering paragraph 20 thereof, alleges that the written agreement referred to is the best evidence of its terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

15. Answering paragraphs 21 and 22 thereof, alleges that no sum or amount is due or owing to debtors with respect to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that Esgro is indebted to debtors, or any of them, in the amount alleged or in any amount or sum whatsoever.

FOURTH ALLEGED CLAIM

16. Answering paragraph 23 thereof, alleges that the said Claim of Esgro and Esgro's Amended Claim are the best evidence of their claims and allegations.

17. Answering paragraphs 24 and 25 thereof, Esgro alleges that the objections made therein by the Trustees are the best evidence of their content; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that any of said objections are valid.

AFFIRMATIVE DEFENSES

As in four separate affirmative defenses to each and all of the alleged claims of the Trustees against Esgro herein, Esgro alleges as follows:

FIRST AFFIRMATIVE DEFENSE

18. The above-entitled Court is without jurisdiction to determine the claims of debtors and the Trustees herein against Esgro and the facts and matters in connection therewith since debtors have submitted such claims to the jurisdiction of the Bankruptcy Court for the United States District Court for the Central District of California, said Court continues to have jurisdiction over such claims in connection with Esgro's Chapter XI proceedings and that Court has determined and ordered that such issues are to be tried and determined in connection with proceedings now pending in the Superior Court of the State of California for the County of Los Angeles.

SECOND AFFIRMATIVE DEFENSE

19. Each and all of the matters and facts alleged in the Amended Proof of Claim of Esgro herein are incorporated

herein by this reference as though set forth in full and a copy of said Amended Proof of Claim is attached hereto and labeled as Exhibit "A". By virtue of said facts and matters, the debtors, Trustees and plaintiffs herein have waived and are estopped from making their claims herein and are barred by said doctrines and the doctrine of "unclean hands" from obtaining any judgment and relief herein.

THIRD AFFIRMATIVE DEFENSE

20. With respect to the Residential Interior Departments agreement at issue herein, it was the intention of the parties that no minimum annual compensation would be due for the period ending April 30, 1972 unless debtors made available to Esgro space for the Residential Interior Departments at least one full year prior to April 30, 1972 and debtors did not make such space available for such full year. In addition, Esgro alleges that by virtue of the facts and matters alleged in its Amended Proof of Claim herein, which is Exhibit "A" hereto, debtors prevented and precluded Esgro from conducting operations in its Residential Interior Departments for the year ended April 30, 1973 and that operations in the Residential Interior Departments were not continued under said agreement through April 30, 1973. As a result and consequence thereof, debtors, the Trustees and plaintiffs herein are precluded from obtaining any judgment or relief herein. Further, in the event this Court determines that the said written agreements do not fully or adequately reflect the intention of the parties as alleged herein, Esgro alleges that said written agreements should be reformed to accurately reflect the said intentions of the parties.

FOURTH AFFIRMATIVE DEFENSE

21. Debtors, the Trustees and plaintiffs herein are barred from recovery herein by virtue of the doctrines of waiver, laches and estoppel as a result of their having delayed in making their claims herein.

FIFTH AFFIRMATIVE DEFENSE

22. Debtors, the Trustees and plaintiffs herein are barred from recovery herein by virtue of the breaches of contract and failure of consideration as alleged in the Amended Proof of Claim of Esgro herein (Exhibit "A" hereto).

SIXTH AFFIRMATIVE DEFENSE

23. The agreements between debtors and Esgro contemplated that Esgro would have adequate time to establish and begin its Residential Interior Departments prior to any "minimum annual compensation" period beginning. Despite this fact, debtors did not afford to Esgro an opportunity to begin operations in said departments as early as contemplated by the said agreements nor in a timely fashion and, as a consequence, debtors and Esgro agreed, and debtors' acts and conduct led Esgro to believe, that any "minimum annual compensation" in said departments from said agreements would not begin to accrue until and unless the said Residential Interior Departments were in full operation and selling to the public. As a result of the foregoing, debtors, the Trustees and plaintiffs herein are barred from recovery herein for any and all "minimum annual compensation" on said Residential

Interior Departments for any period prior to the time when said departments were in full operation and selling to the public.

WHEREFORE, Esgro prays that the Trustees and plaintiffs herein take nothing by their Complaint herein and for judgment:

1. Dismissing the Complaint herein;
2. For costs of suit; and
3. For such other and further relief as is just.

DATED: November 4, 1976

GIBSON, DUNN & CRUTCHER
WEIL, GOTSHAL & MANGES

By _____
Arthur L. Sherwood
Attorneys for California
Wholesale Electric Company
(formerly "Esgro, Inc.")

GIBSON, DUNN & CRUTCHER
515 South Flower Street
Los Angeles, California 90071
Telephone: (213) 488-7000

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767 Fifth Avenue
New York, New York 10022
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A 000038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	AMENDED PROOF OF CLAIM ON BEHALF OF ESGRO, INC. (now known as "California Wholesale Electric Company") Claim No. 7273A
Debtors.	:	

Pursuant to leave having been granted by the Court in the above-entitled matter, California Wholesale Electric Company (formerly known as "Esgro, Inc." and hereinafter referred to as "Esgro") submits the following Amended Proof of Claim with respect to its initial Proof of Claim No. 7273A filed herein on August 27, 1974:

1. The undersgined, Francis J. Esgro, who resides at 2020 Nichols Canyon Road, Los Angeles, California 90046, is the President of Esgro, a California corporation. Esgro maintains its principal place of business at 3237 South Garfield Avenue, Los Angeles, California 90040.

2. The following bankrupt entities in the above-entitled proceedings (hereinafter referred to jointly as the "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in sums set forth in paragraph 3(P) hereof: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation;

Exhibit "A"

White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc., a Washington corporation; and White Front Burien, Inc., a Washington corporation; and Interstate Stores, Inc., a corporation.

3. The grounds upon which this claim is asserted and upon which liability on the part of the White Front Debtors is claimed are the following:

(A) On or about December 1, 1970, Esgro and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro of "Residential Interior Departments" in stores operated and to be operated by the White Front Debtors under the name "White Front." Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972. Copies of this agreement and the various amendments thereto were included, as Exhibits "A" through "G", inclusive, in connection with Esgro's initial Proof of Claim herein.

(B) Pursuant to the said agreement, the parties agreed, among other things, that Esgro (or its affiliates) was granted the right and license to operate Residential

Interior Departments concessions in each and all of the stores operated by the White Front Debtors, with certain specified exceptions, for a term extending to 1987. The stores where such right and license was granted are hereinafter sometimes referred to as the "White Front Stores."

(C) During the course and as a part of the negotiations between Esgro and the White Front Debtors with respect to the said agreement, the White Front Debtors represented to and assured Esgro, among other things, that the operations of the White Front Stores and the "White Front" division of debtor Interstate Stores, Inc. ("Interstate") was a healthy and profitable one and that the White Front Debtors fully intended to maintain and expand their chain of White Front Stores during the full term of the Residential Interior Agreement. In addition, in connection with the said negotiations, the White Front Debtors represented to and assured Esgro that Interstate, the "parent company" of the remaining White Front Debtors, was not in danger of financial difficulty and had a net worth of approximately $79 million. In addition, during and throughout 1970 and thereafter, the White Front Debtors published and made public financial statements of Interstate reporting the operations of Interstate (and all of its subsidiaries) on a fully consolidated basis, which showed a net worth of approximately $79 million and which did not note or indicate any financial difficulty of the White Front stores or their operations.

(D) Esgro reasonably relied upon said

representations, assurances and published financial statements of the White Front Debtors in entering into the said agreement and in making and undertaking its extensive commitments and obligations in connection therewith.

(E) From and after the execution of the said agreement, up until at least November 1972, the White Front Debtors continually represented to and assured Esgro that the White Front operation was a profitable and ongoing business and was not suffering from or incurring any undue financial difficulties. In addition, the White Front Debtors, during this period of time, assured and represented to Esgro that they were not considering the closing of any of the White Front Stores.

(F) Esgro reasonably relied upon these assurances and representations in connection with making its investments in time, money and effort to construct, establish and stock its Residential Interior Departments. Esgro did, in fact, pursuant to said agreement, construct, establish and stock Residential Interior Departments in 33 separate White Front Stores located throughout the States of California, Oregon and Washington and constructed, established and stocked three separate warehouses in support thereof.

(G) The said representations and assurances of the White Front Debtors, and each and all of them, were false and untrue and the White Front Debtors knew or should have known of such falsity in that, among other things:

(i) As of December 1970 (i.e., at or about the time of execution of the said agreement), and all times

thereafter and for a substantial period of time prior thereto, the White Front division of Interstate was incurring increasingly severe operating losses and had become unprofitable.

(ii) The internal operating statements for the White Front division of Interstate available to the White Front Debtors at and just before the said agreement was signed showed results for the first nine months of the then current fiscal year as a loss of approximately $6,325,000, before allocation of New York office overhead and provision for Federal income tax.

(iii) It should have been or was clear to management of the White Front Debtors, beginning sometime prior to December 1970, that the financial operations and results of the White Front Stores were so bad and deteriorating so steadily and rapidly that a substantial number (if not all) of said White Front Stores would have to be disposed of or sold.

(iv) At the time of execution of the said agreement, Interstate did not have a net worth of approximately $79 million. Interstate's net worth was substantially below that sum and Interstate knew or should have known of substantial financial problems which it was incurring and which it would incur.

(H) The White Front debtors did not disclose to Esgro or anyone else and instead concealed and kept strictly within the White Front Debtors' knowledge the poor financial results of the White Front operations. As a result, representations and assurances made to Esgro in connection with the said agreement and Esgro's establishment and maintenance of its Residential Interior Departments were

false and misleading and the financial results of Interstate reported to Esgro and to the public were false and misleading.

(I) Continually up until mid-December 1972, the White Front Debtors concealed and failed to disclose to Esgro their intention to sell or close all or substantially all of the White Front Stores and, to the contrary, affirmatively represented to and assured Esgro that such stores would remain open through the entire term of the said agreement.

(J) In reliance upon the truth of said misrepresentations made to Esgro and of the failure by the White Front Debtors to reveal the true facts Esgro continued operations in said White Front Stores and did not make adequate or necessary provisions for the closing of said stores.

(K) On or about November 19, 1972, Esgro first learned of the true intentions of the White Front Debtors with respect to White Front Stores closings and, in order to minimize and mitigate its losses and damages, Esgro determined to close its Residential Interior Departments and informed the White Front Debtors of such determination.

(L) On or about December 12, 1973, the White Front Debtors announced publicly (and thereby informed Esgro) that the White Front Debtors had resolved and determined to close 21 of the 33 said White Front Stores and that such closings would take place in approximately one month.

(M) The White Front Debtors did, in fact, close each and all of the said White Front Stores by mid-1974.

(N) Had Esgro known the true facts concerning the financial status of the White Front operation and of

Interstate or their intentions, Esgro would not have entered into the said agreement and would not have established, maintained or operated its Residential Interior Departments.

(O) The said acts and conduct of the White Front Debtors, and each and all of them, constitute fraud, misrepresentation (intentional or negligent), breach of contract and interference with contractual relations. In addition, should the Court for any reason decline to allow this claim on those grounds, Esgro is entitled to the allowance of such claim on the grounds of mistake (unilateral or mutual) as to the continued existence and viability of the White Front Stores and their financial condition and on that ground, the said agreement is rescindable and Esgro is entitled to recovery of its losses incurred as a result thereof.

(P) As a direct and proximate result of the said acts and conduct of the White Front Debtors, Esgro has been injured and damaged in the following approximate amounts for which this claim is made:

(i) In the amount of $2,300,000 as a result of expenses incurred and lost in connection with the construction and establishment of the Residential Interior Departments and the three warehouses in connection therewith.

(ii) In the amount of $2,200,000 as the loss incurred in liquidating Esgro's Residential Interior Departments inventory, including handling expenses therefor.

(iii) In the amount of $2,300,000 as the book loss incurred by Esgro as a part of its operational Start-up cost of establishing its Residential Interior Departments.

(iv) In the amount of $24 million as lost reasonably anticipated profits from operations by Esgro of its Residential Interior Departments during the term of the said agreement.

(v) In the amount of $3,200,000 as lost reasonably anticipated profits under the portion of said agreement providing for the supply, by Esgro, to the White Front Debtors, of electrical and plumbing products.

(vi) In the amount of $5 million as additional general damages.

(vii) In the amount of $5 million as exemplary or punitive damages based upon the willful and malicious conduct of the White Front Debtors.

(viii) In an amount which is, as yet, undetermined for costs, interest and attorneys' fees incurred herein and in connection with associated litigation.

(Q) The White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them and with respect to the said agreement that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate existence under the circumstances would sanction fraud and promote injustice. As a result thereof, this claim should be allowed against each and all of the said White Front Debtors, jointly and severally.

4. No judgement has been rendered, as yet, on the claim here set forth.

5. No payment on this claim has been made, and accordingly, no such payment has been credited or deducted.

6. This claim is not subject to any setoff or counterclaim; however, the White Front Debtors contend to the contrary.

7. No security interest is held for this claim.

8. This claim is a general unsecured claim.

DATED: October 21, 1976

CALIFORNIA WHOLESALE ELECTRIC COMPANY (formerly known as "Esgro, Inc."), a California corporation

By _____
Francis J. Esgro, Its President

A 000047

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	
Debtors.	ORDER TO SHOW CAUSE

Upon the annexed affidavit of DANIEL L. CARROLL, sworn to November 9, 1976 and upon all proceedings heretofore had herein in connection with the Trustees application to expunge Claim No. 7273A of Esgro, Inc., and sufficient cause appearing therefor, it is

ORDERED, that California Wholesale Electric Company (formerly known as Esgro, Inc.) show cause before the undersigned at the United States Courthouse, Foley Square, New York, New York, Room 102, on the 12th day of November, 1976 at 10 A M., or as soon thereafter as counsel can be heard, why an order should not be entered dismissing and striking the amended proof of claim filed herein on behalf of Esgro, Inc., upon the ground that said claim was not timely filed and that it would be highly prejudicial to the Trustees to permit the filing of said claim at this time; and it is further

ORDERED, that personal service of a copy of this order and the affidavit upon which it is based upon Messrs. Weil Gotshal & Manges on or before 6 P M. on the 9th day of November, 1976 shall be deemed good and sufficient service; and it is further

A 000048

ORDERED, that answering papers, if any, shall be served upon Shea Gould Climenko & Casey, attorneys for the Trustees, 330 Madison Avenue, New York, New York 10017 and filed with the Court on or before 12 P.M. on the 11th day of November, 1976.

Dated: New York, New York
November 9, 1976

/s/ John M. Cannella
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	:	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	
Debtors.	:	AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL L. CARROLL, being duly sworn, deposes and says:

1. I am associated with the firm of Shea Gould Climenko & Casey, attorneys for the Trustees of the above captioned debtors. I make this affidavit in support of the Trustees' motion for an order striking and dismissing the amended proof of claim filed herein on behalf of California Wholesale Electric Company, formerly known as Esgro, Inc. and hereinafter referred to as "Esgro."

2. The basis for the instant motion is that the Trustees' objection to Esgro's Claim No. 7273A is presently scheduled for trial on November 18, 1976, all pre-trial discovery with respect to that claim has been completed and it would, therefore, be highly prejudicial to permit Esgro at this late date to amend its claim so as to assert a completely new theory of liability and to increase its damage claim by over $5,000,000.

3. By order dated June 26, 1974, this Court directed, pursuant to Rule 10-209, that all claims be filed with the Trustees on or before September 1, 1974*. On August 29, 1974, the Trustees received claim No. 7273A of Esgro, Inc. which asserted a general unsecured claim in the amount of $33,758,972 plus a claim for punitive damages in the amount of $5,000,000. Esgro was a licensee operating Residential Interior Departments in various White Front Stores which were operated by various White Front debtors. A copy of the proof of claim (without exhibits) is annexed hereto as Exhibit A.

4. An examination of Proof of Claim No. 7273A demonstrates that it alleges that at the time Esgro and White Front Stores, Inc. entered into the December 1, 1970 Agreement, White Front had determined to sell or close all or substantially all of the White Front Stores (Ex., A, paragraph 3(D)). The only allegation contained in the original Proof of Claim concerning alleged misrepresentations made at or about the time of the December 1, 1970 Agreement is the allegation contained in paragraph 3(E) that "[c]ontinually from the date said determination was reached [which is alleged to have occurred prior to December of 1970] until in or about November of 1972" White Front "affirmatively represented to and assured Esgro that such stores would remain open through the entire term of said agreement, as amended, and further that additional White Front stores would be opened by White Front debtors and would thereupon become subject to said agreement."

5. An examination of the Amended Proof of Claim, a copy of which is annexed hereto as Exhibit B,* demonstrates

* This date was later extended to October 1, 1975 by order dated October 23, 1975.

** Although the Amended Proof of Claim bears the date October 21, 1976, it was not served upon the attorneys for the Trustees until November 1, 1976.

that Esgro has now completely changed its theory of liability. There is no longer the allegation that a determination had been made in December of 1970 concerning the closing of any White Front Stores. Rather, it is alleged that during the course of the negotiation of the December 1, 1970 Agreement White Front made representations to Esgro concerning the financial condition and profitability of the White Front Stores and that said representations were false. (Ex. B, paragraph 3(C)) In short, the gravamen of the "fraud" allegations of the Amended Proof of Claim is that misrepresentations were made as to White Front's profitability and financial condition at the time of the December 1, 1970 Agreement, allegations which are completely absent from the original Proof of Claim.

6. As the Court is well aware, this case is presently scheduled for trial on November 18, 1976. Under this Court's September 1, 1976 order, all discovery was directed to be completed by September 18, 1976. The vast majority of the Trustees' discovery was completed by the end of July. Therefore, in seeking to amend its proof of claim at this late date, Esgro is attempting to interject into the trial issues upon which the Trustees have had no opportunity to conduct discovery, have had no opportunity to prepare for trial and which are not at all raised by the original Proof of Claim.

7. It is clear that Esgro knew of all of the facts upon which the Amended Proof of Claim is based long before the Trustees commenced discovery. Esgro was a licensee in the White Front Stores from 1956 through 1972. As of December of 1970, Esgro's relationship with White Front went back even further than Interstate's. Discovery conducted to date indicates

that Esgro was intimately familiar with White Front's business and frequently made suggestions to White Front's management as to the manner in which White Front's business could be improved. As a licensee operating two departments (i.e., jewelry and camera departments and liquor departments) in the vast majority of the White Front Stores in the late sixties, I respectfully suggest that Esgro had to have been as aware of the slippage in White Front's business beginning in early 1970 as White Front's executives were. Esgro's awareness of White Front's problems is demonstrated by its July 22, 1971 letter to Sol W. Cantor, Interstate's Chairman, in which Esgro indicates that it had made substantial investments in White Front (i.e., in connection with the Residential Interior Departments) in spite of "rumors concerning the trend that sales and profits have taken in your White Front division." A copy of that letter is annexed hereto as Exhibit C.

8. However, even if it can be assumed that Esgro was completely oblivious to White Front's problems in late 1970, these problems were spelled out in detail in the Trustees' Section 167 Report which was sent to all claimants, including Esgro, in December of 1975. Copies of pages 14-16 and pages S-45 to S-49 of that report are annexed hereto as Exhibit D.

9. In any event, in early July of this year, Esgro was provided with detailed financial statements of the White Front operations which showed that White Front had lost substantial amounts of money during the first nine months of fiscal 1970 (as alleged in paragraph 3(G)(ii) of the Amended Proof of Claim). On July 21 to July 23, 1976, the deposition of Francis J. Esgro, Esgro's President, was conducted in Los Angeles, California. At no time during the course of that deposition did

the attorneys for Esgro or Mr. Esgro intimate that it was now their position that misrepresentations had been made to Esgro concerning White Front's financial condition at the time of the December 1, 1970 Agreement. Therefore, Mr. Esgro was not at all examined with respect to any such alleged misrepresentations. On July 28, 1976, the deposition of Harry Epstein was taken by the Trustees. Mr. Epstein, who is no longer employed by the debtors, was one of the individuals who negotiated the December 1, 1970 Agreement with Esgro. Again, at no time during the course of Mr. Epstein's deposition did counsel for Esgro indicate that Esgro would take the position that misrepresentations were made to it during the course of the negotiation of the December 1, 1970 Agreement. However, in cross-examining Mr. Esgro, Esgro's counsel for the first time asked certain questions which indicated that Esgro felt that certain financial information had not been provided to it. Immediately following the Epstein deposition, Esgro's counsel, while engaging in a general discussion of the case, stated for the first time that Esgro felt that misrepresentations had been made to it concerning White Front's financial condition.

10. In mid-August, during the course of a meeting with Arthur Sherwood of Gibson Dunn & Crutcher, Mr. Sherwood brought up the subject of amending certain pleadings in the California lawsuit, including the amendment by Esgro of its cross-complaint in that action. Said cross-complaint is substantially identical to the original Proof of Claim filed by Esgro herein. At that time, I made no comment to Mr. Sherwood with respect to our position on any attempt by Esgro to amend that cross-complaint. Therefore when Mr. Sherwood wrote to me on August 24, 1976 and stated that we had agreed during the

course of that meeting that it would make sense for all parties to update the respective pleadings in the California state court action and in this proceeding, I immediately wrote to Mr. Sherwood and informed him that I had made no such agreement. I also told Mr. Sherwood in that letter that I did not agree that any amendment on his part would be appropriate, and that we intended to vigorously oppose any attempt by Esgro either to so amend. A copy of Mr. Sherwood's August 24, 1976 letter, as well as my August 30, 1976 letter to Mr. Sherwood, are annexed hereto as Exhibits E and F, respectively. Therefore, Esgro's counsel has known for over two months that we would not consent to any amendment of its Proof of Claim. Yet, it has waited until the eve of trial to file an Amended Proof of Claim.

11. The Amended Proof of Claim purports to be filed "[p]ursuant to leave ... granted by the Court." We are not aware of any order by this Court permitting Esgro to file an Amended Proof of Claim. Apparently, Esgro is referring to a discussion held on October 18, 1976 at which the Court indicated that the Trustees should assert in this action any claim that it had against Esgro in connection with Esgro's operation of the Residential Interior Departments. Apparently, Esgro's counsel feels that Esgro was also given permission at that time to amend its Proof of Claim. We made it clear, however, during the course of the conference held on October 18, 1976 that we intended to oppose any attempt by Esgro to amend its Proof of Claim to assert this new theory of liability.

12. There can be no question that the Trustees will be seriously prejudiced if Esgro is permitted to amend its Proof of Claim on the eve of trial. None of the individuals who negotiated the December 1, 1970 Agreement are any longer

employed by the debtors. Therefore, it will be impossible for the Trustees at this late date to conduct any discovery with respect to the misrepresentations allegedly made concerning White Front's financial condition at the time of the December 1, 1970 Agreement. Nor will the Trustees be able to prepare a defense to the charges of such alleged misrepresentations in that the individuals who Esgro claims made such misrepresentations are no longer available to the Trustees. By concealing its intention to assert a claim that such misrepresentations were made until after the Esgro deposition was completed, Esgro has effectively precluded the Trustees from examining Mr. Esgro concerning the alleged misrepresentations and his knowledge in December of 1970 with respect to White Front's financial condition.*

13, As noted, above, it is quite obvious that Esgro knew about White Front's financial difficulties at the time of the December 1, 1970 Agreement at least as early as July of 1971 and surely when it received the Section 167 Report of the Trustees in December of last year. If in fact representations were made to Esgro in December of 1970 that the White Front Division "was a healthy and profitable one" as alleged in paragraph 3(c) of the Proof of Claim, then surely Esgro was put on notice that these

* Numerous other facts upon which no discovery has been had would be relevant to the allegations of misrepresentation. For example, since Esgro was in 1970 already operating two other departments in White Front stores, the operating results of these departments during that period would clearly be relevant to the allegations contained in the Amended Proof of Claim. Also, regular concessionaire meetings were held by White Front. At these meetings the operation of the stores was discussed. The Trustees have been precluded from developing these facts which would obviously make Esgro's claimed ignorance of White Front's hard times in 1970 highly suspect.

alleged misrepresentations were not true long ago and at least as early as December of 1972 when White Front announced that it was going to close a substantial number of White Front Stores because of poor operating results. And, if this did not put Esgro on notice, then the well publicized financial difficulties of debtor Interstate throughout 1973 and early 1974, which culminated in the filing of this proceeding, surely put Esgro on notice that these alleged representations perhaps were not completely accurate. Yet, when Esgro filed its Proof of Claim in August of 1974, nothing whatever was said concerning alleged representations of White Front's financial condition as of December 1970.

14. I respectfully suggest that the above demonstrates that there is no basis for permitting Esgro to now file a Proof of Claim which asserts a completely new theory of liability predicated upon alleged representations made in connection with the negotiation of the December 1970 Agreement and that the Amended Proof of Claim should, therefore, be stricken. Clearly, Esgro is merely trying to continue its efforts to delay this reorganization proceeding by now asserting a new claim, having obviously discovered that there is no factual basis for its original claim.

Daniel L. Carroll

Sworn to before me this
9th day of November, 1976.

MARION C. TESLIK
Notary Public, State of New York
No. 30-0956425
Qualified in Nassau County
Term Expires March 30, 1977

A000057

Exhibit A

A 000058

7273A

Esgro

DeMARCO, BARGER, BERAL & PIERNO
515 South Flower St., Suite 4400
Los Angeles, California 90071
Telephone: (213) 680-2811

Attorneys for Irving Sulmeyer, Receiver

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Attorney for Esgro, Inc.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of INTERSTATE STORES, INC., etc., et al. Debtors.	In Proceedings for the Reorganization Nos. 74 B 614-802 inclusive PROOF OF CLAIM ON BEHALF OF ESGRO, INC.

1. The undersigned, Francis J. Esgro, who resides at 2020 Nichols Canyon Road, Los Angeles, California 90046, is the President of Esgro, Inc., a California corporation, which corporation is debtor in those certain Proceedings for an Arrangement No. 73-0250 pending in the United States District Court, Central District for California. Esgro, Inc. maintains its principle place of business at 3237 South Garfield Avenue, Los Angeles, California 90040. The undersigned, Irving Sulmeyer, Receiver, who is the duly appointed Receiver in bankruptcy of Esgro, Inc., is authorized as a matter of law to make this proof of claim on behalf of Esgro, Inc. and accordingly joins in said claim. Said Receiver maintains his place of business at 615 South Flower Street, Suite 601, Los Angeles, California 90017.

2. The following bankrupt entities in the above-

entitled proceedings (hereinafter usually referred to jointly as "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in a sum as yet unascertained but estimated to be $35,000,000.00: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation; White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc., a Washington corporation; and White Front Burien, Inc., a Washington corporation; Interstate Department Stores, Inc., a corporation, and Does I through XXX, inclusive.

3. The ground upon which the claim is asserted, and upon which liability on the part of White Front Debtors is claimed, is the following:

(A) Your claimant is informed and believes and thereon alleges that White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate

BEST COPY AVAILABLE

corporate existence under the circumstances would sanction fraud and promote injustice.

(B) On or about December 1, 1970 Esgro, Inc. and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro, Inc. of residential interior departments in stores operated by each and all the White Front debtors except Interstate Department Stores, Inc. ("Interstate"). Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972 and separate agreements for certain of the White Front Debtor stores in operation were executed (said agreement of December 1, 1970, together with amendements thereto and the separate store agreements are referred to hereinafter as "the agreement, as amended", and copies thereof are attached hereto in chronological order as Exhibits "A" through "G", inclusive).

(C) Pursuant to the agreement, as amended, the parties agreed in part that Esgro, Inc. or its affiliates were granted the right and license to operate residential interior departments concessions in each and all of the stores operated by White Front Stores, Inc., or its subsidiaries, with certain exceptions, for a term extending to 1987 (such stores where such right and license were granted are hereinafter sometimes referred to as the "White Front Stores").

(D) Your claimant is informed and believes and thereon alleges that prior to December 1970 White Front Debtors determined to either sell or close all or substantially all of said White Front Stores under circumstances which would prohibit or foreclose the continued operation of the concession for the operation of residential interior departments in such stores

granted to Esgro, Inc. by said agreement, as amended.

(E) Continually from the date said determination was reached until in or about November of 1972 White Front Debtors concealed and failed to disclose to Esgro, Inc. their said intention to sell or close substantially all of the White Front Stores, and affirmatively represented to and assured Esgro, Inc. that such stores would remain open through the entire term of said agreement, as amended, and further, that additional White Front Stores would be opened by White Front Debtors and would thereupon become subject to said agreement, as amended.

(F) Your Claimant is informed and believes and on that ground alleges that in or before early October 1972 White Front Debtors determined and resolved to in fact close and cease business in a majority of the said White Front Stores.

(G) Despite said determination and resolution and its anticipated and expected severe and adverse effect on the business of Esgro, Inc., White Front Debtors failed and refused to disclose to Esgro, Inc. such determination and resolution but rather, in order to induce it to continue to operate departments in all of said White Front Stores until the very day of such stores closing without adequate or necessary provisions being made for such closing, misrepresented to Esgro, Inc. that, among other things, the said White Front Stores would continue operations and that there had been no resolution or determination made that any of the said White Front Stores would be closed.

(H) In reliance upon the truth of said misrepresentations Esgro, Inc continued operations in said White Front Stores and did not make adequate or necessary provision for

the closing of said Stores.

(I) On or about December 15, 1973 White Front Debtors announced publicly and first informed Esgro, Inc. that White Front Debtors had resolved and determined to close twenty-one of the thirty-three said White Front Stores and that such closings would take place forthwith.

(J) Esgro, Inc. relied upon the truth of the said misrepresentations of White Front Debtors in continuing to expend monies, time and effort in connection with the creation, openings and operations of the said departments in the said White Front Stores, which monies, time and effort would not have been expended had Esgro, Inc. known of the true intentions, determinations and resolutions of White Front Debtors with regard to the sale or closing of the said White Front Stores.

(K) White Front Debtors did, in fact, close said twenty-one stores and as a result of the closing by said defendants of twenty-one of the thirty-three said White Front Stores, Esgro, Inc. could not adequately or economically operate the said departments in only the remaining twelve White Front Stores and could not continue to operate said remaining departments with the remaining threat of closure and claimant was required to cease and discontinue the operation of the said departments in these remaining White Front Stores also.

(L) As a direct and proximate result of the said misrepresentations and fraud of White Front Debtors, their unilateral breach of the said agreement, as amended, and their interferences with the contractual relations of Esgro, Inc. and rescission of the said agreement, as amended, Esgro, Inc. has

been injured and damaged in an amount the exact extent of which is uncertain, but which includes the losses and expenses incurred in closing said departments and the lost future profits from the anticipated operations of said departments, and claimant is informed and believes and on that ground alleges that said injury and damage are in the amount of $33,758,972.00.

(M) The acts and omission of White Front Debtors set forth above were done willfully and maliciously, and Esgro, Inc. is further entitled to punitive damages in the amount of $5,000,000.00.

4. No judgment has been rendered on the claim here set forth.

5. No payments on this claim have been made, and accordingly no such payments have been credited or deducted.

6. This claim is not subject to any setoff or counterclaim, however, White Front Debtors contend to the contrary and have alleged that Esgro, Inc. has breached its covenant to pay rent under the amended agreement, which contention is denied by Esgro, Inc.

7. No security interest is held for this claim.

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A 000064

8. This claim is a general unsecured claim.

DATED: August 27, 1974

ESCRO, INC., a California corporation

By _____
Francis [illegible] Esgro, Its President

DATED: August 27, 1974

APPROVED AND CONSENTED TO

_____
Irving Summer, Esquire
Receiver in Bankruptcy of
the Estate of Esgro, Inc.

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK A000066

In re	:	Reorganization Nos. 74 B 614-802
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	Inclusive
	:	AMENDED PROOF OF CLAIM ON BEHALF OF ESGRO, INC. (now known as "California Wholesale Electric Company")
Debtors.	:	Claim No. 7273A

Pursuant to leave having been granted by the Court in the above-entitled matter, California Wholesale Electric Company (formerly known as "Esgro, Inc." and hereinafter referred to as "Esgro") submits the following Amended Proof of Claim with respect to its initial Proof of Claim No. 7273A filed herein on August 27, 1974:

1. The undersgined, Francis J. Esgro, who resides at 2020 Nichols Canyon Road, Los Angeles, California 90046, is the President of Esgro, a California corporation. Esgro maintains its principal place of business at 3237 South Garfield Avenue, Los Angeles, California 90040.

2. The following bankrupt entities in the above-entitled proceedings (hereinafter referred to jointly as the "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in sums set forth in paragraph 3(P) hereof: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation;

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White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc. a Washington corporation; and White Front Burien, Inc., a Washington corporation; and Interstate Stores, Inc., a corporation.

3. The grounds upon which this claim is asserted and upon which liability on the part of the White Front Debtors is claimed are the following:

(A) On or about December 1, 1970, Esgro and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro of "Residential Interior Departments" in stores operated and to be operated by the White Front Debtors under the name "White Front." Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972. Copies of this agreement and the various amendments thereto were included, as Exhibits "A" through "G", inclusive, in connection with Esgro's initial Proof of Claim herein.

(B) Pursuant to the said agreement, the parties agreed, among other things, that Esgro (or its affiliates) was granted the right and license to operate Residential

A 000068

Interior Departments concessions in each and all of the stores operated by the White Front Debtors, with certain specified exceptions, for a term extending to 1987. The stores where such right and license was granted are hereinafter sometimes referred to as the "White Front Stores."

(C) During the course and as a part of the negotiations between Esgro and the White Front Debtors with respect to the said agreement, the White Front Debtors represented to and assured Esgro, among other things, that the operations of the White Front Stores and the "White Front" division of debtor Interstate Stores, Inc. ("Interstate") was a healthy and profitable one and that the White Front Debtors fully intended to maintain and expand their chain of White Front Stores during the full term of the Residential Interior Agreement. In addition, in connection with the said negotiations, the White Front Debtors represented to and assured Esgro that Interstate, the "parent company" of the remaining White Front Debtors, was not in danger of financial difficulty and had a net worth of approximately $79 million. In addition, during and throughout 1970 and thereafter, the White Front Debtors published and made public financial statements of Interstate reporting the operations of Interstate (and all of its subsidiaries) on a fully consolidated basis, which showed a net worth of approximately $79 million and which did not note or indicate any financial difficulty of the White Front stores or their operations.

(D) Esgro reasonably relied upon said

representations, assurances and published financial statements of the White Front Debtors in entering into the said agreement and in making and undertaking its extensive commitments and obligations in connection therewith.

(E) From and after the execution of the said agreement, up until at least November 1972, the White Front Debtors continually represented to and assured Esgro that the White Front operation was a profitable and ongoing business and was not suffering from or incurring any undue financial difficulties. In addition, the White Front Debtors, during this period of time, assured and represented to Esgro that they were not considering the closing of any of the White Front Stores.

(F) Esgro reasonably relied upon these assurances and representations in connection with making its investments in time, money and effort to construct, establish and stock its Residential Interior Departments. Esgro did, in fact, pursuant to said agreement, construct, establish and stock Residential Interior Departments in 33 separate White Front Stores located throughout the States of California, Oregon and Washington and constructed, established and stocked three separate warehouses in support thereof.

(G) The said representations and assurances of the White Front Debtors, and each and all of them, were false and untrue and the White Front Debtors knew or should have known of such falsity in that, among other things:

(i) As of December 1970 (i.e., at or about the time of execution of the said agreement), and all times

thereafter and for a substantial period of time prior thereto, the White Front division of Interstate was incurring increasingly severe operating losses and had become unprofitable.

(ii) The internal operating statements for the White Front division of Interstate available to the White Front Debtors at and just before the said agreement was signed showed results for the first nine months of the then current fiscal year as a loss of approximately $6,325,000, before allocation of New York office overhead and provision for Federal income tax.

(iii) It should have been or was clear to management of the White Front Debtors, beginning sometime prior to December 1970, that the financial operations and results of the White Front Stores were so bad and deteriorating so steadily and rapidly that a substantial number (if not all) of said White Front Stores would have to be disposed of or sold.

(iv) At the time of execution of the said agreement, Interstate did not have a net worth of approximately $79 million. Interstate's net worth was substantially below that sum and Interstate knew or should have known of substantial financial problems which it was incurring and which it would incur.

(H) The White Front debtors did not disclose to Esgro or anyone else and instead concealed and kept strictly within the White Front Debtors' knowledge the poor financial results of the White Front operations. As a result, representations and assurances made to Esgro in connection with the said agreement and Esgro's establishment and maintenance of its Residential Interior Departments were

false and misleading and the financial results of Interstate reported to Esgro and to the public were false and misleading.

(I) Continually up until mid-December 1972, the White Front Debtors concealed and failed to disclose to Esgro their intention to sell or close all or substantially all of the White Front Stores and, to the contrary, affirmatively represented to and assured Esgro that such stores would remain open through the entire term of the said agreement.

(J) In reliance upon the truth of said misrepresentations made to Esgro and of the failure by the White Front Debtors to reveal the true facts Esgro continued operations in said White Front Stores and did not make adequate or necessary provisions for the closing of said stores.

(K) On or about November 19, 1972, Esgro first learned of the true intentions of the White Front Debtors with respect to White Front Stores closings and, in order to minimize and mitigate its losses and damages, Esgro determined to close its Residential Interior Departments and informed the White Front Debtors of such determination.

(L) On or about December 12, 1973, the White Front Debtors announced publicly (and thereby informed Esgro) that the White Front Debtors had resolved and determined to close 21 of the 33 said White Front Stores and that such closings would take place in approximately one month.

(M) The White Front Debtors did, in fact, close each and all of the said White Front Stores by mid-1974.

(N) Had Esgro known the true facts concerning the financial status of the White Front operation and of

interstate or their intentions, Esgro would not have entered into the said agreement and would not have established, maintained or operated its Residential Interior Departments.

(O) The said acts and conduct of the White Front Debtors, and each and all of them, constitute fraud, misrepresentation (intentional or negligent), breach of contract and interference with contractual relations. In addition, should the Court for any reason decline to allow this claim on those grounds, Esgro is entitled to the allowance of such claim on the grounds of mistake (unilateral or mutual) as to the continued existence and viability of the White Front Stores and their financial condition and on that ground, the said agreement is rescindable and Esgro is entitled to recovery of its losses incurred as a result thereof.

(P) As a direct and proximate result of the said acts and conduct of the White Front Debtors, Esgro has been injured and damaged in the following approximate amounts for which this claim is made:

(i) In the amount of $2,300,000 as a result of expenses incurred and lost in connection with the construction and establishment of the Residential Interior Departments and the three warehouses in connection therewith.

(ii) In the amount of $2,200,000 as the loss incurred in liquidating Esgro's Residential Interior Departments inventory, including handling expenses therefor.

(iii) In the amount of $2,300,000 as the book loss incurred by Esgro as a part of its operational Start-up cost of establishing its Residential Interior Departments.

(iv) In the amount of $24 million as lost reasonably anticipated profits from operations by Esgro of its Residential Interior Departments during the term of the said agreement.

(v) In the amount of $3,200,000 as lost reasonably anticipated profits under the portion of said agreement providing for the supply, by Esgro, to the White Front Debtors, of electrical and plumbing products.

(vi) In the amount of $5 million as additional general damages.

(vii) In the amount of $5 million as exemplary or punitive damages based upon the willful and malicious conduct of the White Front Debtors.

(viii) In an amount which is, as yet, undetermined for costs, interest and attorneys' fees incurred herein and in connection with associated litigation.

(Q) The White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them and with respect to the said agreement that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate existence under the circumstances would sanction fraud and promote injustice. As a result thereof, this claim should be allowed against each and all of the said White Front Debtors, jointly and severally.

4. No judgement has been rendered, as yet, on the claim here set forth.

A 000074

5. No payment on this claim has been made, and accordingly, no such payment has been credited or deducted.

6. This claim is not subject to any setoff or counterclaim; however, the White Front Debtors contend to the contrary.

7. No security interest is held for this claim.

8. This claim is a general unsecured claim.

DATED: October 21, 1976

CALIFORNIA WHOLESALE ELECTRIC COMPANY (formerly known as "Esgro, Inc."), a California corporation

By _____
Francis J. Esgro, Its President

Exhibit C

A 000076

July 22, 1971

PERSONAL & CONFIDENTIAL

Mr. Sol W. Cantor
Chairman of the Board
Interstate Stores, Inc.
111 - 8th Avenue
New York, New York 10003

Dear Sol:

I have been on the receiving end of all kinds of rumors concerning the trend that sales and profits have taken in your White Front division. You know I believe that you are going to be successful in resolving any problems that exist and reverse the downward trend, and I have do demonstrated by causing Esgro, Inc. to make substantial additional investments in the future of White Front. I hope you will get a chance to visit our new Residential Interiors departments to which I refer, and let me know what you think of them. We will start opening on July 24th.

I think the key for White Front lies with a completely new approach to merchandising, plus the development of the appropriate type of store management and personnel to implement that approach. As I said, I am sure you will find the right answer and the right man, but should I be wrong and if the inadequate performance of White Front became a drain on Interstate to the point where it would be in your best interest to dispose of White Front, then I hope you will give me the courtesy of discussing the matter with you on a confidential basis, before you discuss it with others.

I hope that you don't feel that I have been presumptuous in writing you in this vein, but I do not like to learn that White Front has put certain of its stores on the block or that it is having difficulties of one kind or another. You know that I have always felt that the

logical conclusion for the White Front portion of the Esgro operation would be to be absorbed by Interstate. It is possible now, however, that better results for all concerned could be achieved by the opposite move.

We have some strong contacts with Merrill Lynch here on the West Coast, and while I have not discussed this matter with them as to whether or not they would assist us in raising the money, I believe I could get them to do it if the deal made sense on paper, and if you wanted me to.

The above is just food for thought that may mean nothing now, but could be something of importance for you to consider at a future date.

Sincerely yours,

ESGRO, INC.

Francis J. Esgro

FJE/bs

Exhibit D

During the period from 1961 through 1968, as the Interstate stock market price rose substantially, holders of $4.9 million of the original $5.8 million of the 4-5/8% Convertible Subordinated Debentures converted their Debentures into shares of Common Stock, thereby increasing capital surplus by over $4.4 million. See "Price Range of Interstate Securities" elsewhere in this Report.

Mortgage indebtedness also increased to $12.6 million at February 2, 1969. Perhaps more significant, the so-called "off balance sheet" financing of the new stores through 50% owned subsidiaries and joint ventures, as discussed above, had increased to a point that these entities had long term mortgage debt and short term borrowing aggregating $49.2 million as at February 2, 1969. It was Interstate's lease obligations on these stores that, indirectly, amortized this mortgage debt. At such date the debtors' minimum annual rental of real and personal property amounted to approximately $14.1 million (not including the related real and personal property taxes).

THE DECLINE AND THE DELUGE: FEBRUARY 1969 to MAY 1974

In retrospect, it is clear that the major contributory factor to the debtors' ultimate need to resort to the protection of the Bankruptcy Act was the overexpansion of the discount divisions during the 1960's and the inability to operate these divisions profitably in the 1970's.

OPERATIONS OF THE DISCOUNT DIVISION A 000080

Fiscal 1968 was probably the last year of profitability for the White Front division and fiscal 1969 was the last year of profitability for the Topps Division. See Exhibit H to this Report. Although such Exhibit shows that White Front made a contribution to profit during fiscal 1969 and Topps made a contribution to profit during fiscal 1970, an allocation of general corporate overhead would result in losses.

In fiscal 1970, the White Front and Topps discount operations as a whole incurred a loss of approximately $5,100,000 before income taxes. The losses from these discount operations increased during the subsequent fiscal years, and were reported as follows:

Fiscal year	Number of stores in operation at end of period	Operating Losses* Corporate Office Expense Included	Operating Losses* Corporate Office Expense Excluded
		- - (000's omitted) - -	
1970	109	$ 5,100	$ 3,600
1971	107	10,500	8,800
1972	91	26,600	23,900
1973	65	27,400	23,600

* Loss excludes interest expense incurred by the debtors in connection with the financing of such operations (See Exhibit I to this Report).

As shown in Exhibit C to this Report, during the period from fiscal 1969 to fiscal 1973, sales of the discount operations declined. Additionally, the gross margin on sales remained static at the same time operating costs continued to increase. The debtors appear to have financed the resultant operating losses through increased borrowing. Interest expense increased from $2,600,000 in 1969 to $8,200,000 in 1973. The interest cost was not totally applicable to the discount stores and consequently is not reflected in the operating results of these divisions.

During the five-year period ended January 1973, payroll costs increased approximately 2.5%, as a percentage of sales. Former management have advised the Trustees that much of this increase was attributed to the unionization of many stores during this period and that the debtors' payroll costs were generally higher than their competitors as a result of the unionized staff. Internal studies prepared for the seven years ended January 30, 1972 indicate that the discount divisions' payroll cost exceeded that of their competition by approximately 3.3% of sales.

Occupancy costs increased approximately 1.6% as a percentage of sales during the five-year period ended January 28, 1973. This increase resulted primarily from the construction of larger stores which were planned for higher sales volume. However, these larger facilities

INTERSTATE STORES, INC.

(Debtors in Reorganization)

OPERATING RESULTS OF DISCONTINUED DISCOUNT STORES

(Notes A and B)

	Fiscal year ended January,				
	1974	1973	1972	1971	1970
	(000's omitted)				
Loss of stores discontinued or to be discontinued as of January, 1973	$ -	$ 12,616	$ 7,030	$ 5,094	$ 540
Loss/(profit) of remaining stores	27,363	14,007	3,422	52	(11,191)
Loss/(profit) of all discount stores	$ 27,363	$ 26,623	$ 10,452	$ 5,146	$(10,651)

NOTES:

(A) The above results are before any income tax effects and include allocations of Home Office expenses but exclude interest expense incurred by the Debtor in connection with the financing of such operations.

(B) The above results do not include any amounts attributed to the disposal of stores discontinued which aggregated $69,580 and $40,284 at and during the fiscal years ended 1974 and 1973, respectively.

INTERSTATE STORES, INC.

(Debtors in Reorganization)

OPERATING RESULTS OF DISCONTINUED DISCOUNT STORES

(Notes A and B)

	Fiscal year ended January,				
	1974	1973	1972	1971	1970
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(B) The above results do not include any amounts attributed to the disposal of stores discontinued which aggregated $69,580 and $40,284 at and during the fiscal years ended 1974 and 1973, respectively.

Exhibit I

INTERSTATE STORES, INC.

(Debtors in Reorganization)

OPERATING RESULTS OF DISCONTINUED DISCOUNT STORES

(Notes A and B)

	Fiscal year ended January,				
	1974	1973	1972	1971	1970
	(000's omitted)				
Loss of stores discontinued or to be discontinued as of January, 1973	$ -	$ 12,616	$ 7,030	$ 5,094	$ 540
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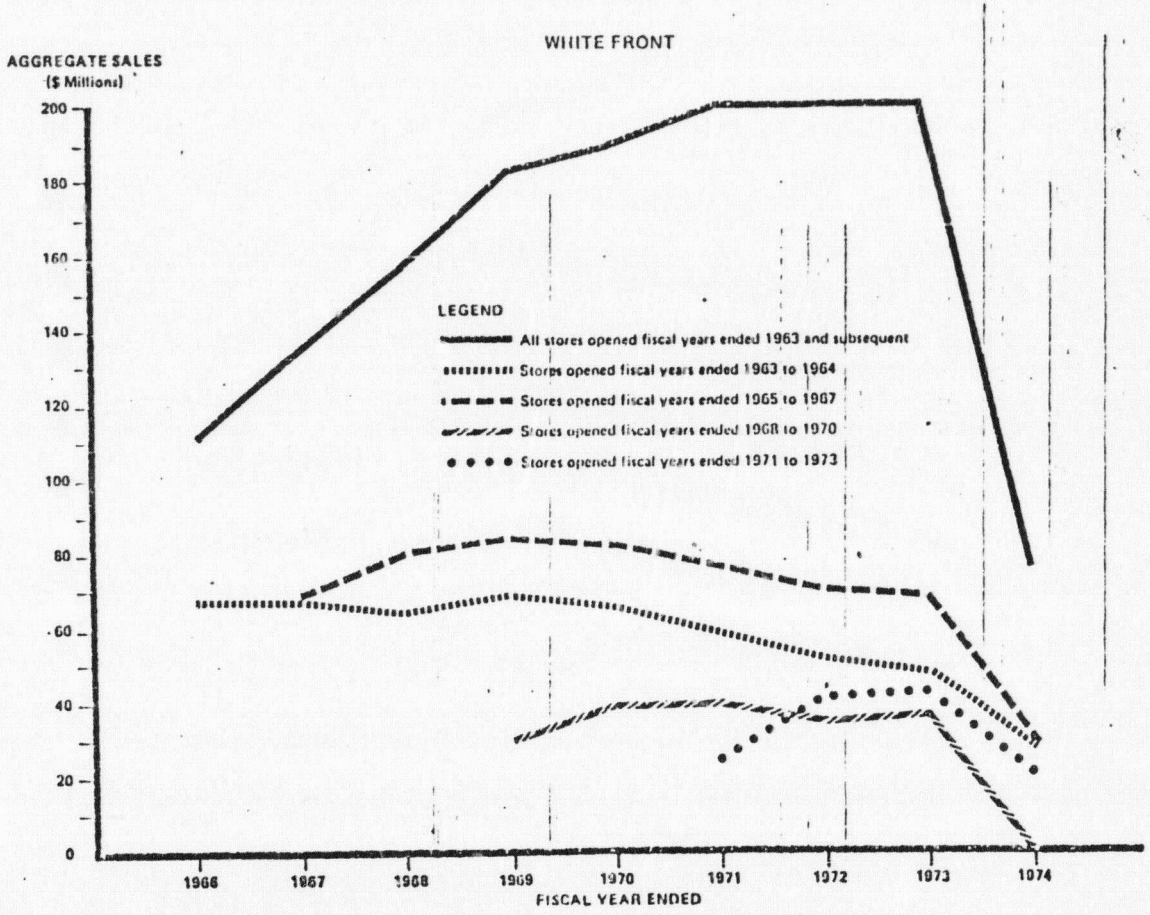
INTERSTATE STORES, INC.

(Debtors in Reorganization)

SALES AND PROFIT TREND DATA OF DISCOUNT STORES BY YEAR OF OPENING



NOTE: This exhibit was prepared from internal financial statements prior to audit. The graph tracks the sales volume of stores opened in those years indicated in the legend as compared to the sales volume of all stores opened subsequent to fiscal year ended 1963.

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Exhibit J

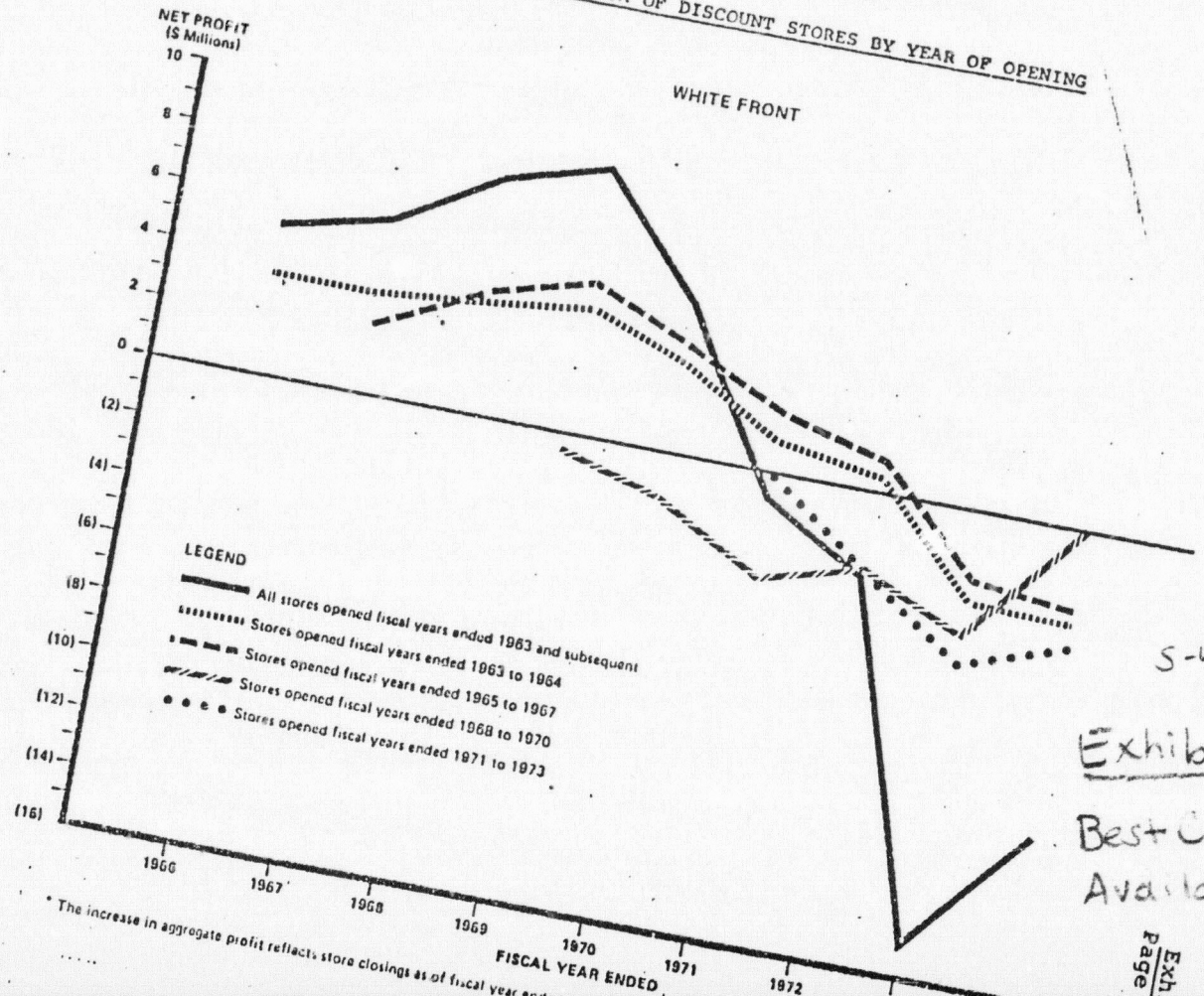
A 000085

Exhibit J
Page 1 of 4

INTERSTATE STORES, INC.

(Debtors in Reorganization)

SALES AND PROFIT TREND DATA OF DISCOUNT STORES BY YEAR OF OPENING



* The increase in aggregate profit reflects store closings as of fiscal year ende

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Exhibit J

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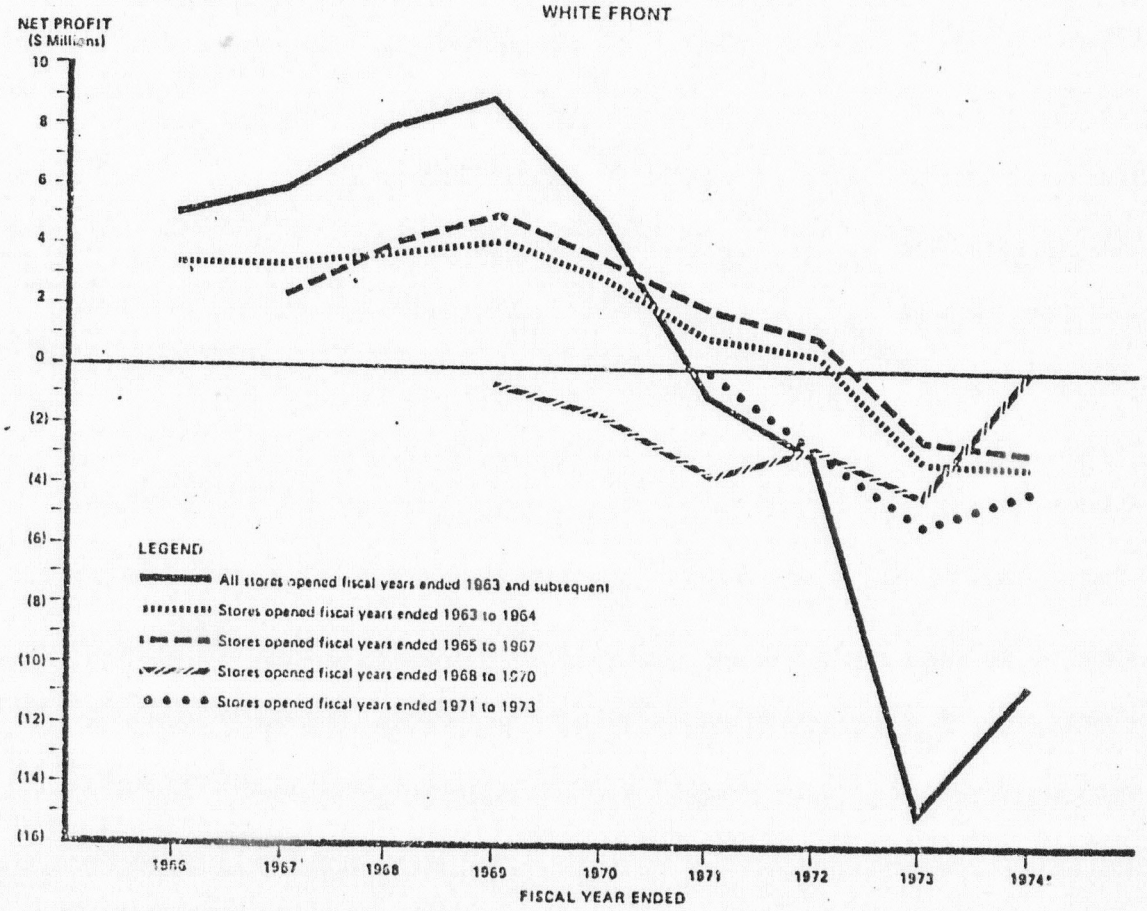
Page

INTERSTATE STORES, INC.

(Debtors in Reorganization)

SALES AND PROFIT TREND DATA OF DISCOUNT STORES BY YEAR OF OPENING



* The increase in aggregate profit reflects store closings as of fiscal year ended January 28, 1973.

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A 000087

INTERSTATE STORES, INC.

(Debtors in Reorganization)

SALES AND PROFIT TREND DATA OF DISCOUNT STORES BY YEAR OF OPENING

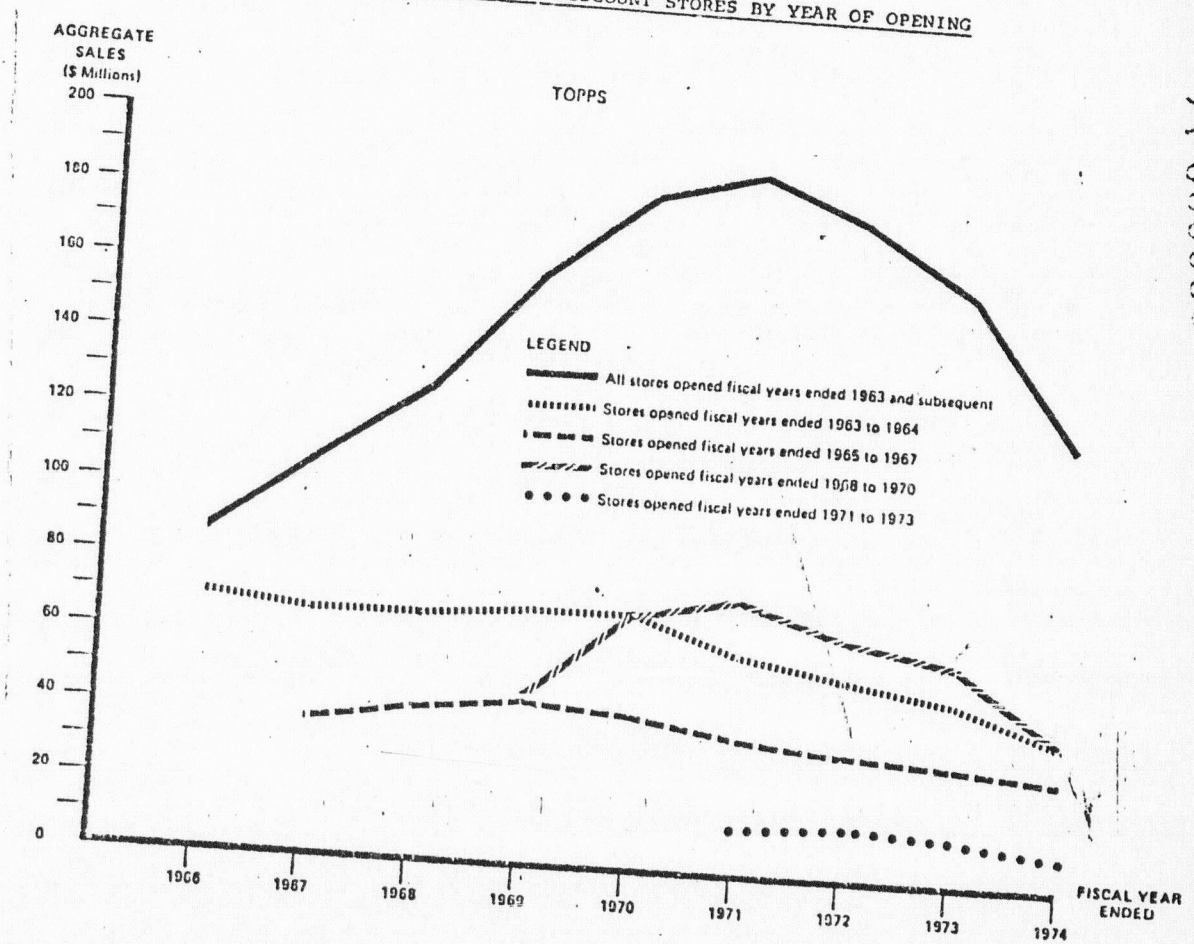


Exhibit J

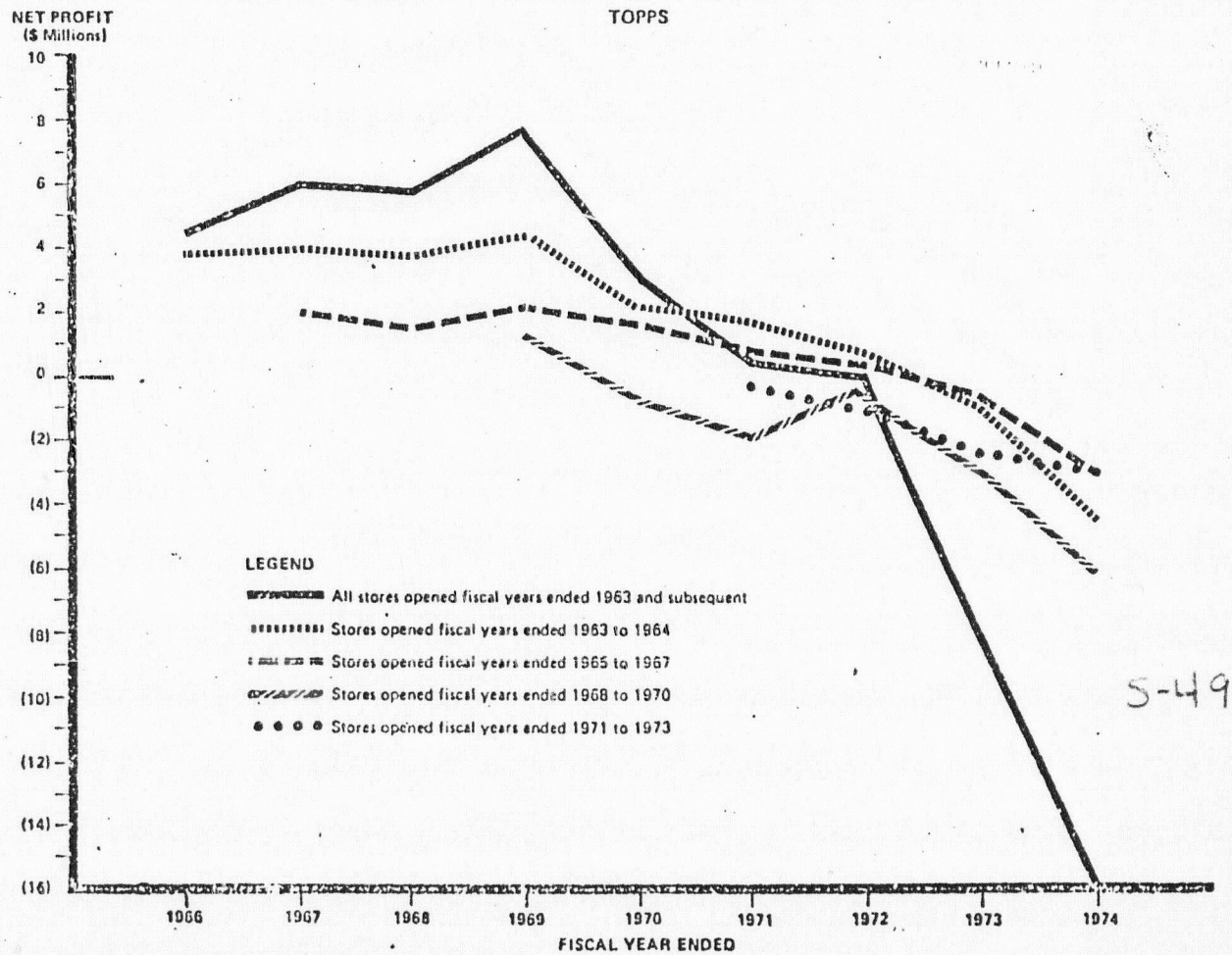
A 000088

Exhibit J
Page 3 of

INTERSTATE STORES, INC.

(Debtors in Reorganization)

SALES AND PROFIT TREND DATA OF DISCOUNT STORES BY YEAR OF OPENING



A 000089

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Exhibit J
Page 4 of 4

NEWPORT CENTER
660 NEWPORT CENTER DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 644-2071

LOS ANGELES, CALIFORNIA 90071
(213) 489-7200
TELEX: 67-4930
CABLE ADDRESS: GIBTRASK

EUROPE
4 RUE SAINT FLORENTIN
75001 PARIS, FRANCE
260-3905
CABLE ADDRESS: GIBTRASK PARIS
TELEX: 210805

SAN DIEGO
600 B STREET
SAN DIEGO, CALIFORNIA 92101
(714) 231-1100

August 24, 1976

WRITER'S DIRECT DIAL NUMBER

488-7121

OUR FILE NUMBER

T 8853-27

Daniel L. Carroll, Esq.
Shea, Gould, Climenko
& Casey
330 Madison Avenue
New York, N. Y. 10017

Re: White Front Stores, Inc. v. Esgro, Inc., et al.

Dear Dan:

This letter will serve to summarize the various matters which we discussed in New York last week.

1. We have agreed to block out time for the following depositions:

A. Gary Mintz, to take place in Los Angeles on September 13-14, 1976;

B. Julian Lavitt, to take place in Los Angeles on September 15-16, 1976;

C. Alan Keroes, to take place in Los Angeles on September 17, 1976;

D. Walter Craig, to take place in New York on October 6-7, 1976;

E. Sol Cantor, to take place in New York on October 8 and 12, 1976;

F. Monroe Chapin, to take place in New York on October 13, 1976;

G. Messrs. Robert Reisner and Robert Van Tuyl, to take place at or near Boca Raton, Florida, on October 14-15, 1976.

You have agreed to make Messrs. Cantor, Craig and Chapin available for the depositions scheduled as set forth above. I will arrange for the appearances of the others. As we discussed also, this schedule assumes that trial will commence in the Superior Court in Los Angeles in late November 1976 and should, for any reason, there be an earlier trial date ordered in New York, this deposition schedule will have to be accelerated significantly.

2. During our discussions in New York, I thought we had tentatively agreed upon a solution to your seeking further answers to the "New York" set of White Front interrogatories. Upon my return to my office here in Los Angeles I found that a Motion for further interrogatory answers had been filed on behalf of White Front, with your firm's name on it, of course. As I had already indicated to you, while I believe that such a Motion is not timely, I am very surprised that you made no mention of the filing of this Motion when we spoke. In any event, the filing of this Motion by White Front obviously means that you are no longer willing to further explore the agreement we discussed in New York.

3. You have still not produced for our inspection a number of documents which had been promised for production, including the following:

A. White Front consolidated and store-by-store operating result sheets for the years 1968 through 1973;

B. Minute Books for each of the White Front corporations;

C. Computer print-outs for the months of October and November 1970 and October and November 1972;

D. The financial statements and any written reports and/or studies presented to members of the Board of Directors of Interstate at the various meetings from 1969 through 1973.

So as to obviate the need for a Motion for the production of these documents, and sanctions, would you please let me know as soon as possible when we may expect the production of these documents or copies thereof.

4. With respect to your letter of August 17, 1976, I have a recollection of your saying, during the course of Mr. Esgro's deposition, that you were going to undertake to list specific documents which you wanted. It will be interesting to see whether this appeared on the transcribed portion of that deposition. In any event, we will try to put together a set of copies of the documents you request and those you requested during the course of Mr. Esgro's deposition, so far as our notes disclose them.

5. We have agreed that it makes sense for both of us to update the respective Complaint and Cross-Complaint in this state court action and, depending upon the results of the current appeal in the bankruptcy matter in New York, we should both undertake to do this as soon as possible.

Very truly yours,

Arthur L. Sherwood
of GIBSON, DUNN & CRUTCHER

ALS:ma

BEST COPY AVAILABLE

August 30, 1976

Arthur L. Sherwood, Esq.
Gibson Dunn & Crutcher
515 South Flower Street
Los Angeles, California 90071

Re: White Front v. Esgro

Dear Art:

I am in receipt of your letter of August 24, 1976. Since your letter does not accurately "summarize the various matters we discussed" while you were in New York, I feel that a response is warranted.

First, I did not agree to make Messrs. Craig and Chapin available for depositions. I did agree to attempt to get in touch with them in order to determine their availability but made it very clear to you that neither Mr. Craig nor Mr. Chapin were in any way within our control and specifically recall suggesting that you subpoena them.

As to our discussion about your further answers to the "New York Interrogatories" I mentioned to you during the course of our discussion that, in view of your pending motion addressed to our interrogatory answers, we would also be making a motion addressed to your interrogatory answers. I did not mention to you that the motion had been filed because I did not at that time know that it had been filed. Your agreement to provide further information and documentation was, therefore, made with full knowledge that the motion would be made.

In my letter to you of August 26, I advised you that, with the exception of the October and November 1970 general ledgers, all of the documents referred to in Items A, B and C at page 2 of your letter were available at my office. As I recall, our discussion about consolidated and store by store operating statements was limited to the period 1969 through 1972 rather than the 1968 to 1973 period mentioned in your letter.

As to Item D on page 2 of your letter I made no "promise" with respect to the production of financial statements and written reports and/or studies presented to the members of the Board of Directors of Interstate between 1969 and 1973. I have at all times advised you that I have been diligently searching for any such documents but have not yet been able to find any.

Also, I might mention that it would appear that a complete reevaluation of my cooperation with your "informal" discovery requests is in order in view of the position you took on the discovery motions before the California court. I was quite suprised to hear that you had taken the position that you didn't have to produce the particular memorandum in question because it had not been formally demanded. As I understand it, that was the basis for the court decision.

My position with respect to Item 4 on page 3 of your letter has been made clear in prior correspondence. I would hope that the documents involved will be produced in the very near future. I would, however, appreciate your advising me if you now intend to take the position that you do not have to produce the documents because they were not formally requested.

As to Item 5 on page 3 of your letter I made no agreement "that it would make sense" for you to update your cross complaint. In fact, I specifically made a point of not indicating any agreement on my part when you mentioned your desire to amend the cross complaint. Both Bob Holtzman and I have mentioned to you on a number of occasions our inclination to supplement White Front's complaint so as to include amounts which were not included in the original complaint. As I am sure you realize, this is a completely different matter than amending a cross complaint so as to assert an entirely different theory of liability. We do not agree that such an amendment would be appropriate and intend to vigorously contest any attempt on your part to so amend.

Sincerely,

Daniel L. Carroll

DLC:ceb

bc R. A. Holtzman

corporate existence under the circumstances would sanction fraud and promote injustice.

(B) On or about December 1, 1970 Esgro, Inc. and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro, Inc. of residential interior departments in stores operated by each and all the White Front debtors except Interstate Department Stores, Inc. ("Interstate"). Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972, and separate agreements for certain of the White Front Debtor stores in operation were executed (said agreement of December 1, 1970, together with amendements thereto and the separate store agreements are referred to hereinafter as "the agreement, as amended", and copies thereof are attached hereto in chronological order as Exhibits "A" through "G", inclusive).

(C) Pursuant to the agreement, as amended, the parties agreed in part that Esgro, Inc. or its affiliates were granted the right and license to operate residential interior departments concessions in each and all of the stores operated by White Front Stores, Inc., or its subsidiaries, with certain exceptions, for a term extending to 1987 (such stores where such right and license were granted are hereinafter sometimes referred to as the "White Front Stores").

(D) Your claimant is informed and believes and thereon alleges that prior to December 1970 White Front Debtors determined to either sell or close all or substantially all of said White Front Stores under circumstances which would prohibit or foreclose the continued operation of the concession for the operation of residential interior departments in such stores

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al., Debtors.	Reorganization Nos. 74 B 614-802 Inclusive AFFIDAVIT

STATE OF CALIFORNIA)
: ss.:
COUNTY OF LOS ANGELES)

ARTHUR L. SHERWOOD, being first duly sworn, deposes and says:

1. I am an attorney at law duly admitted to practice before all Courts in the State of California and a partner in the law firm of Gibson, Dunn & Crutcher, attorneys for California Wholesale Electric Company (formerly known as "Esgro, Inc." and referred to hereinafter as "Esgro") in connection with this and an associated California State Court action.

2. I submit this Affidavit in opposition to a Motion of the Trustees herein for an Order striking and dismissing the Amended Proof of Claim of Esgro herein.

3. The particularization of the claim of Esgro which has apparently been brought into question by the Trustees' Motion involves, in essence, the allegation that at the time the White Front Debtors and Esgro signed the Residential Interior Departments agreement (the agreement at issue), White Front knew that the White Front operation had incurred losses in excess of $6.3 million for the preceding nine months and that that adverse financial situation was misrepresented to and concealed from Esgro.

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4. Esgro first learned in about early July 1976 that the White Front operation had been incurring a substantial operating loss as of the time of entering into the Residential Interior Departments agreement, when counsel for the Trustees produced to me copies of certain of White Front's internal operational statements. Among the operating statements produced in early July 1976, was a statement which had been prepared by the internal accounting staff of Debtors' a week or two pricr to the execution of the Residential Interior Departments agreement and which showed operational results for the White Front division of Interstate, for the nine-month period ending November 1, 1970, as a loss of over $6,300,000 (prior to allocation of New York office overhead). This financial statement had been one requested for production as early as 1973 and Esgro had no other source for its production other than White Front.

5. The claims of Esgro against White Front relevant to this proceeding are embodied in a Cross-Complaint in a State Court action initially brought by White Front and in Esgro's initial Proof of Claim in these proceedings. At the times these pleadings were filed, neither Esgro nor its counsel were aware that the White Front operation had been incurring such substantial losses in December 1970 and, for that reason, could not and did not make a specific allegation to that effect but rather relied upon a more general and encompassing allegation with respect to store closings.

6. Aside from some initial interrogatories, the first real discovery effort which was undertaken by counsel for the Trustees consisted of the taking of the deposition of Mr. Francis J. Esgro, the chief operating officer of Esgro. That deposition was taken on July 21, 22, and 23, 1976 and I attended each of the sessions of that deposition. Mr. Daniel Carroll

represented the Trustees at that deposition. I had only received the White Front financial statements which had finally been produced by White Front within the preceding few days, but I did indicate to Mr. Carroll both in the course of questions at that deposition and in other discussions with Mr. Carroll that Esgro now felt that there had been substantial misrepresentations and omissions with respect to the disclosure of the losses then incurred by White Front. I believe that Mr. Carroll understood what I was saying in this regard. Attached hereto as Exhibit "A" are copies of various pages of the transcript of the deposition of Mr. Esgro. These pages of the transcript demonstrate, in essence, Mr. Carroll's lack of interest in questioning Mr. Esgro about conversations and representations made to him by White Front even though such representations and statements were clearly and explicitly at issue even under the most restricted reading of Esgro's initial Proof of Claim and Cross-Complaint.

7. Later that same week in July, Mr. Carroll took the deposition of Mr. Harry Epstein, one of the former principal operating officers of White Front. I attended only part of that deposition personally, Mr. Wesley G. Howell, attended and represented Esgro during that deposition. I did attend and participate in a discussion towards the end of that deposition, however, wherein Mr. Carroll was explicitly informed that counsel for Esgro believed that liability would be certain to be found against White Front in this case due to White Front's misrepresentations and failure to disclose the substantial losses it was incurring as of late 1970.

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8. In early or mid-August 1976, I had conversations with counsel for the Trustees including Mr. Carroll wherein I raised the subject of amending the pleadings in both the California State Court action and the Proof of Claim in this proceeding to "update" them. White Front's counsel at that time had indicated that it was their intention, at some stage, to file an amended or supplemental complaint in the California State Court action to bring that action "up to date" and I indicated that Esgro would want to update its Cross-Complaint and Proof of Claim to cover in a more specific and particularized way the legal position of Esgro. Mr. Carroll apparently refers to one of these conversations in paragraph 10 of his Affidavit and he is correct when he states that I brought this subject up. I do not specifically recall whether Mr. Carroll affirmatively agreed with an updating or whether he simply "made no comment. . . with respect to [the Trustees'] position," but either from Mr. Carroll's affirmative statement or from his lack of any objection, I understood from that conversation that we were in agreement to an updating of the pleadings. As a consequence, I included the confirmatory statement in my letter to Mr. Carroll of August 24, 1976 referred to in paragraph 10 of Mr. Carroll's Affidavit. When I received Mr. Carroll's response, dated August 30, 1976, I was surprised to learn of the position of Mr. Carroll with respect to a mutual updating of pleadings. By the time I received Mr. Carroll's letter, however, I believe that I had already learned of the substance of Judge Cannella's September 1, 1976 Order which, in effect, reimposed a stay on the California State proceedings. From that date to the present time Esgro and its counsel have considered themselves barred from making any effort to amend or

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update Esgro's Cross-Complaint in that State Court action. Also as a consequence of that Order of Judge Cannella and as a consequence of my understanding that a Pretrial Order supplants and supercedes any pleadings to the contrary, I assumed that the updating and particularization involved could be adequately dealt with as a part of the Pretrial Order itself rather than by amending the Proof of Claim of Esgro and I proceeded along those lines.

9. From the very first, all of Esgro's drafts of contentions and issues for the Pretrial Order in this case included contentions essentially identical to the allegations of the Amended Proof of Claim of Esgro and counsel for the Trustees regularly received drafts and copies of these contentions. The Pretrial Order eventually filed with the Court included a section of contentions and issues of Esgro which are virtually identical to the allegations of Esgro's Amended Proof of Claim and a copy of those contentions is attached hereto as Exhibit "B". It was only during the course of discussions with counsel for the Trustees sometime during early October 1976 that it was made clear that there may be some question of whether an agreed Pretrial Order could be drafted to effectively update and particularize Esgro's claim.

10. On October 18, 1976, I attended a scheduled Pretrial Conference before Judge Cannella in this matter. At that date, the Pretrial Conference Order was in the process of finalization, but had not yet been filed with the Court. During the course of this Pretrial Conference, questions were raised concerning the status of the pleadings in this matter and counsel for the Trustees were orally told by Judge Cannella that they may file a Counterclaim against Esgro in this proceeding

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so that the "entire" Residential Interior Departments controversy between White Front and Esgro could be tried together in the same lawsuit in this Court. During the course of that discussion, I specifically asked Judge Cannella whether, since the Trustees were being permitted to file additional pleadings, Esgro would also be permitted to update and amend its Proof of Claim and Judge Cannella very specifically answered that question by saying "yes." I know of no formal Order, proceeding or matter other than these very same oral discussions by which the Trustees herein had leave to file a "Complaint" against Esgro and it was clear from Judge Cannella's comments that the updating or modification of pleadings was to be a "two-way street" such that each side would be permitted the opportunity for such amending or updating.

11. As is pointed out in the accompanying Memorandum of Law submitted on behalf of Esgro in connection with this Motion, the statements and suggestions of Mr. Carroll in his Affidavit to the effect that the Trustees have not had an opportunity to conduct discovery on the purported "new" allegations is simply not true. During the course of numerous proceedings in this matter, the Trustees have continually taken the position that they wanted an early cut off of discovery, since they said they were anxious to get this matter to trial as soon as possible and it has been Esgro that has consistently (and with only limited success), argued that more time was needed for discovery. Indeed, I understand that one of the attorneys for the Trustees, during the course of his argument to the Second Circuit in an Appeal in this matter some time ago, specifically stated to the Court that the Trustees were ready for an immediate trial and needed no further discovery.

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12. On November 5, 1976 it was suggested to Mr. Carroll that if the Trustees or their counsel had any doubt about the claims made they could and should resume the deposition of Mr. Esgro that very day. Counsel for the Trustees declined to do so.

13. Any "new" or "additional" facts or matters raised in the Amended Proof of Claim are facts and matters which have either been brought into issue by specific allegations of the Trustees themselves by their "Complaint" (as indicated in the accompanying Memorandum of Law of Esgro) or were issues and matters at issue in any event. Attached hereto as Exhibits "C" and "D" are copies of the Trustees' "Complaint" and Esgro's Answer thereto which clearly show that all issues and facts stated in the Amended Proof of Claim are to be tried herein whether or not an Amended Proof of Claim is found timely because of the Trustees' late pleading. Moreover, the adverse financial condition in which White Front found itself in late 1970 (when the Residential Interior Departments agreement was signed) and thereafter is clearly relevant to prove a determination or intention of White Front to close stores (as is alleged in Esgro's initial Proof of Claim). A loss, for instance, of more than $6 million clearly tends to show that there must have been such an intention or decision made. The specific representations and negotiations leading up to and following that agreement and Debtors' financial health have always been a part of Esgro's claim and the subject of discovery herein.

14. I believe that Esgro and its counsel have acted as diligently as possible under the difficult circumstances

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of this multi-court litigation and that any claim of "prejudice" (in discovery or otherwise) by counsel for the Trustees is wholly lacking in merit.

Dated: November 12, 1976

Arthur L. Sherwood

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On [illegible] before me, the undersigned, a Notary Public in and for said State, personally appeared ARTHUR L. SHERWOOD, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Notary Public

OFFICIAL SEAL
FLORENCE T. DORAN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires April 15, 1977

Exhibit A

1971 and 1972?

A Sure. I was concerned. I asked for statements. Especially prior to Residential Interiors I had mentioned to Mr. Epstein that this was a major investment on the part of Esgro, Inc., and I wanted his -- I knew him a long time, and I wanted his assurance that all was well with White Front. He assured me that it was.

Q These rumors in the trade, were they occurring in 1970?

A They were occurring in 1970 about White Front not being successful, and as I said, the stores had begun to deteriorate. That was conversation in the trade, what was happening to White Front, and that concerned me.

Q Do you recall hearing such rumors in 1970 that White Front was going to close or sell its stores?

A Well, White Front was trying to sell its stores in 1970 in the Pacific Northwest.

Q Other than the Pacific Northwest stores?

A That's all that we knew about, and my questions were, What's happening to the others.

Q The interrogatory answer refers to rumors in the trade that White Front was going to sell or close its stores, and I'm asking you whether you recall hearing such rumors in 1970.

A Yes.

Q In 1971?

A And in 1972.

Q Do you recall discussing these on at least 50

occasions with Mr. Epstein?

A Yes.

Q And that was throughout the period 1970, 1971 and 1972?

A That is correct.

Q Do you recall any specific instance of discussing these rumors with Mr. Epstein?

A Almost every time I would see him, and it was not only with Mr. Epstein. It was with others, too.

Q What others?

A Well, other executives of White Front who were there, Walter Craig, Julian Lavitt. I even tried to talk to their builder, Mack Gilburn, and so with anybody else that might know.

Q Mr. Esgro, did you maintain separate payroll records for the Residential Interiors Division?

A Yes.

MR. CARROLL: Mr. Sherwood, rather than sit here and question Mr. Esgro in detail about the response to interrogatory answers I think I would handle that directly with you if you have no objection to that.

MR. SHERWOOD: I'm not sure I understand what you mean. We have discussed --

MR. CARROLL: We have discussed previously the interrogatory answers. If you will agree not to raise the objection that I could have asked Mr. Esgro about more details in his interrogatory answers in his deposition and therefore I'm not entitled to anymore, if you will not raise any

objection, then I will not go into detail on his interrogatory answers.

MR. SHERWOOD: With respect to these interrogatory answers?

MR. CARROLL: Yes.

MR. SHERWOOD: All right.

MR. CARROLL: Subject to the various requests I have made for information and documents, I have no further questions at this time.

MR. SHERWOOD: I don't know what you mean by "subject to," but I think the deposition is over on that basis.

MR. CARROLL: Pardon me?

MR. SHERWOOD: I don't know what you mean by "subject to."

MR. CARROLL: Well, subject to the information and documents I have asked for, and I would hope that there is no problem with supplying what I have asked for and that hopefully there will be no need to ask Mr. Esgro any questions. That's what I mean by "subject to."

MR. SHERWOOD: I'm not going to necessarily agree with reopening the deposition.

MR. CARROLL: I understand.

MR. SHERWOOD: Any notary?

MR. CARROLL: Yes.

(SIGNATURE OF THE WITNESS.)

Exhibit B

34. By agreements dated August 11, 1972, Debtors agreed to purchase from Esgro all of the inventory, fixtures, equipment and leasehold improvements of the jewelry and camera departments located in White Front stores and, on the closing date of said agreements, September 15, 1972, the Master Agreement, as amended, was terminated as it related to the operation by Esgro of said jewelry and camera departments. Esgro contends that it has not been fully paid by the Debtors under the terms of the August 11, 1972 agreements.

35. The order of what follows herein is not to be deemed and is not intended to be a determination of the burden of proof or of going forward herein and is merely as a matter of convenience, for the purposes of this Pretrial Order.

II

Esgro's Contentions

Esgro makes the following contentions in this proceeding and anticipates proving, at trial herein, the following ultimate facts:

1. During the course and as a part of the negotiations between representatives of Esgro and Debtors which led up to and resulted in the Residential Interior Agreement, Esgro (principally through its president and chief operatiing officer Mr. Francis J. Esgro) sought and received from Debtors (principally through their officer primarily rsponsible for supervision and operation of the White Front stores, Mr. Harry Epstein) the assurances and representations that the White Front operation of Interstate was a healthy and profitable one and that Debtors fully intended to maintain and expand their chain of White Front stores during the full term of the Residential Interior Agreement (including

option periods). Esgro received the same representations and assurances from, among others, Mr. Sol Cantor, president, chief executive officer and director of Interstate, and Mr. Robert Riesner, president of the White Front operations and vice president and director of Interstate. At that time and in that connection Esgro sought and received reports of the details and substance of the publicly reported financial position of Interstate which stated and represented that Interstate had a net worth of approximately $79 million, which did not disclose any operating results with respect to the White Front operations separately and which did not disclose the then severe financial difficulty in which the White Front operation found itself.

2. Esgro reasonably relied upon said assurances and representations of Debtors in entering into the Residential Interior Agreement and in making and undertaking its extensive commitments and obligations in connection therewith.

3. From and after the execution of the said Residential Interior Agreement (i.e., sometime between December 20 and December 30, 1970) up until at least November 1972, Debtors and their representatives continually assured and represented to Esgro that White Front was a profitable and ongoing business and was not suffering from or incurring any undue financial difficulties in its operations. Many of these assurances and representations were made to Esgro after Debtors had been asked, specifically, concerning rumors in the "trade" to the effect that White Front was incurring some financial difficulties and was considering the closing of a number of its stores. Debtors, during the same time, continually assured and represented to Esgro that there was no substance to said

rumors and that they were untrue.

4. Esgro reasonably relied upon said assurances and representations in connection with making its substantial investment in time, money and effort to construct, establish and stock its Residential Interior Departments in 33 separate White Front stores located throughout the states of California, Oregon and Washington and three separate warehouses in support thereof.

5. In truth and in fact, as of December 1970, at all times thereafter and for a substantial period prior to that time, the White Front division or operation of Interstate was incurring increasingly severe operating losses and had become an unprofitable operation. Debtors' fiscal year ending January 31, 1969 (the "Debtors' 1968 fiscal year") resulted in earnings for their White Front operations of approximately $5,250,000 (before the allocation of "New York" overhead and provision for federal income tax) which was approximately the same as the earnings for the preceding fiscal year. Up until this leveling off of earnings White Front operations had generally been increasingly profitable. From that point on, the operations and operational results of the White Front stores was unmistakenly and steeply downhill. The 1969 fiscal year was the last profitable fiscal year for White Front operations (before allocation of New York office overhead and provision for federal income tax) when White Front operations earned approximately $1 million. As of about three months after the 1969 fiscal year end it was clear that the 1970 fiscal year would be unprofitable. The

internal operating statement for the White Front division of Interstate available to Debtors at and just before the Residential Interior Agreement was signed showed results for the first nine months of the 1970 fiscal year as a loss of approximately $6,325,000 (again before allocation of New York office overhead and provision for federal income tax). Such yearly losses (prior to allocation of New York overhead and provision for federal income tax) were approximately $5,500,000 for fiscal 1970, $7,750,000 for fiscal 1971 and $14,750,000 for fiscal 1972.

6. The substance and import of these financial results were not disclosed to Esgro, to any of the concessionaires or licensees in any of the White Front stores, or to any of the "public", but were kept strictly internal within the Interstate-White Front "family." The significant and substantial operating losses were, in effect, buried and concealed in overall consolidated Interstate results which were reported to the public in the various financial statements made public and upon which Esgro relied. It is also now evident that the publicly reported net worth of Interstate of approximately $79 million (during 1970 and 1971) was inaccurate and a substantial over statement of the actual net worth of Interstate at that time. In essence, the Interstate consolidated financial statements misrepresented the financial stability, viability and prospects of the White Front operations of Interstate. These financial statements and results were available to officers and directors of Interstate and White Front but were not available to Esgro.

7. Delays were incurred in beginning Residential Interior operations in the various White Front stores as a consequence of Debtors not having the physical space involved fully ready for the appropriate improvements to be made. Nevertheless, Esgro did invest in excess of $2 million making the improvements and doing the construction necessary to begin and maintain its 33 Residential Interior Departments on a reasonably expeditious basis. The Residential Interior Departments were well stocked and staffed by Esgro, again at a multimillion dollar cost.

8. The delay in Esgro being able to begin operations and sales in its Residential Interior Departments, the slowdown in customer foot traffic in the White Front stores and the decline and deterioration in their upkeep, merchandising and maintenance, among other things, resulted in financial pressures on Esgro which in turn resulted in Esgro having to make adjustments in other portions of its business to provide the needed capital. Esgro did so and would have continued the operations and adequately financed its Residential Interior Departments had the said facts and matters represented to Esgro by Debtors been, in fact, true. Esgro reasonably anticipated that its Residential Interior operations would be very profitable over the period of the Residential Interior Agreement, subsequent to a short period for the initial start-up of that business operation.

9. It should have been and, Esgro believes, was clear to management of Debtors beginning from sometime prior to December 1970 that the financial operations and results of

the White Front stores were so bad and deteriorating so steadily and rapidly that a substantial number (if not all) of said stores would have to be disposed of or sold. During the applicable period of time, Debtors had other operations and businesses which were profitable and which were increasing their profits, in particular the retail toy store operations, and by contrast, Interstate was financially much better off investing and maintaining its capital in those profitable operations and minimizing or eliminating its investment, capital and efforts in the deteriorating White Front operation. The evidence will thus show that management of Debtors must have or should have known, intended and determined, as early as mid-1970, to better allocate Interstate's resources by closing or disposing of all or substantially all the White Front stores. Said intention or conclusion and the facts upon which it was based were never disclosed to Esgro prior to December 1972 and, to the contrary, Debtors continually up until December 1972 assured and represented to Esgro that they would maintain, operate and continue, on a viable and going concern basis, all of the White Front stores and, indeed, regularly add to the number of ongoing and operating White Front stores within which Residential Interior Departments could be operated.

10. In October or November 1972, Esgro was more frequently hearing rumors that the White Front operations of Interstate were having financial difficulties and might close some or all of their stores and Esgro became increasingly concerned about that possibility. During that period also, the maintenance, up keep, quality and state of White Front

were visibly deteriorating (despite Debtors' assurances and representations to Esgro to the contrary) because of Debtors' intentions to eliminate the White Front problem soon. A meeting was finally held on Sunday, November 19, 1972. Among other things, representatives of Esgro, during the course of that meeting, asked whether such rumors of store closings were true and if it was Debtors' intention to close substantial numbers of White Front stores in the near future. The responses of representatives of Debtors to these questions were evasive but even at that date Debtors represented and stated to Esgro that they knew of no such intention to close White Front stores. On the basis of the observable operations of White Front stores at the time, the persistent and constant rumors in the trade and the now sometimes equivocal and evasive responses to questions given by Debtors, Esgro concluded that substantial store closings were inevitable in the near future.

11. Esgro believes that the evidence will show that it was apparent to Debtors at the conclusion of the November 19, 1972 meeting that Esgro had learned of the true intentions of Debtors with respect to White Front store closings and that to attempt to minimize their legal exposure and liability Debtors determined to attempt to construct an argument that they legally terminated the occupancy of Esgro and that Esgro was in default under the Residential Interior Agreement.

12. On November 20, 1972, the day after the Sunday meeting, Debtors delivered their "Notice of Default and Notice of Termination of Occupancy" to Esgro and on December 8, 1972 a "Notice of Termination of License Agrement". Despite these Notices and the contentions therein, Esgro was not then in de-

fault (or substantial default) and these Notices of Debtors were merely ineffective attempts by them to exculpate them from liability.

13. Debtors' public announcement on December 12, 1972 that it would close more than 20 of its White Front stores the next month had been formerly subject to resolution and meeting of the Board of Directors of Interstate which had been convened on November 30, 1972 and adjourned to and concluded on December 12, 1972. Esgro first learned of this announcement by hearing the announcement in the press and Debtors never directly informed Esgro of that resolution or decision.

14. At the time of the announcement of the White Front stores to be closed, even the stores reportedly to remain open and continue to be operated by Debtors were incurring, in the aggregate and separately (with one exception) substantial operating losses and Esgro correctly concluded that this initial announcement was only the precursor of additional closings. The remaining White Front stores were, prior to or during mid-1974, all closed by Debtors.

15. Had Esgro known the true facts concerning the financial status of the White Front operation and of Interstate or their intentions, Esgro would not have entered into the Residential Interior Department agreement, would not have established, maintained or operated those departments or, at least would have been able to close and liquidate its Residential Interior Departments so as to better minimize its losses.

16. The relationship between Debtors and Esgro was

such that Debtors had a fiduciary obligation and responsibility to disclose the facts referred to hereinabove to Esgro.

17. The net cost to Esgro of fixed assets, furniture, fixtures, improvements and the like incurred in setting up the Residential Interior Departments and the three warehouses in support thereof was approximately $2,300,000.

18. In liquidating its Residential Interior Departments inventory, Esgro incurred a net loss of approximately $1,900,000 and incurred additional handling expenses of approximately $300,000.

19. As a part of Esgro's start-up costs, Esgro incurred losses from the operations of its Residential Interior Departments of approximately $2,300,000.

20. Had the White Front stores remained open during the term agreed in by the Residential Interior Agreementment, the profits which Esgro would have earned in that business (or others in which it could have invested its capital and efforts) and which were directly and proximately lost as a result of the wrongful acts and conduct of Debtors, total in excess of $24 million. In addition, Esgro lost future profits during said period under the terms of their agreement with Debtors for the supply of electrical and plumbing products to Debtors in an amount in excess of $3 million.

21. As a result of the acts and conduct of Debtors and the financial difficulty in which that placed Esgro, Esgro was forced to institute proceedings under Chapter XI of the Bankruptcy Act and has suffered and incurred losses and additional damage in an amount in excess of $5 million as a result thereof.

22. All of the foregoing losses and damages, including interest thereon, costs and attorney's fees were proximately and directly caused by wrongful conduct and acts of Debtors and Debtors are liable and responsible therefor.

23. Under California law and the facts involved herein, Esgro is entitled to punitive or exemplary damages from Debtors based upon the willful and malicious conduct of Debtors and Esgro seeks such damages in the amount of $5 million.

24. Debtors, and each of them, during the period of time in question were so operated, manipulated and controlled that there existed among them such an identity of ownership that to recognize the fiction of their separate corporate existences under the circumstances would sanction fraud and promote injustice. In practice and effect, the White Front operations and the business included within the White Front division of Interstate was treated and handled as a single business and Interstate and the management, directors and officers of Interstate operated and controlled the affairs for the White Front department stores without regard to the corporate formalities, necessities or significance of separate "White Front corporations". As a consequence, to the extent this claim of Esgro, in whole or in part, is allowed in these proceedings, such claim should be allowed against each of the Debtors, jointly and severally.

25. Esgro's legal theories of liability herein include claims of fraud, misrepresentation (intentional or negligent), breach of contract and interference with contractual relations. In addition, should the Court for any reason decline to render judgment on these grounds, Esgro contends that it entered into the Residential Interior Agreement as a result of fraud or

mistake (unilateral or mutual) as to the continued existence and viability of the White Front stores and on that ground, said Agreement is rescindable and Esgro is entitled to recovery of the losses it incurred as a result thereof.

26. Esgro may raise and prove additional facts and matters and make contentions in addition to the foregoing based upon the positions or facts taken or offered by Debtors at trial herein.

III

The Trustees' Contentions

The Trustees make the following contentions in this proceeding and anticipate proving, at the trial herein, the following facts:

1. At and prior to the time of the December 1, 1970 Residential Interior Agreement, no decision had been made and no consideration had been given to closing or selling all or substantially all of the White Front stores. At best, consideration was being given to selling isolated stores in the Pacific Northwest and Esgro was informed of this.

2. There is no allegation in the Proof of Claim herein that representations were made to Esgro concerning the profitability of White Front and, therefore, Esgro should not be permitted to introduce any evidence at the trial of this matter in support of its contentions in this regard in that this would amount to a belated amendment of its Proof of Claim which, if permitted, would severely prejudice the trustees in

Exhibit C

A 000123

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	
Debtors,	
JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,	SUMMONS
Plaintiffs,	
-against-	
ESGRO, INC.,	
Defendant.	

To the Above-Named Defendant.

YOU ARE HEREBY summoned and, pursuant to this Court's order dated October 21, 1976, required to serve upon Shea Gould Climenko & Casey, plaintiffs' attorneys, whose address is 330 Madison Avenue, New York, New York, a motion or answer to the complaint which is herewith served upon you, on or before the 22nd day of ~~October~~ November, 1976, and to file said answer or motion with this Court not later than the second business day thereafter. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

YOU ARE HEREBY notified that the trial of the proceeding commenced by this complaint has been set for November 17, 1976 at 10:00 o'clock A.M., in Room 102, United States Courthouse, Foley Square, New York, New York

Date Issued: October 21, 1976.

s/ John M. Cannella
U.S.D.J.

Exhibit "C"

TO: Esgro, Inc.
3237 South Garfield Avenue
Los Angeles, California 90040
Attention: Francis J. Esgro

Gibson Dunn & Crutcher
515 South Flower Street
Los Angeles, California 90071

Weil, Gotshal & Manges
767 Fifth Avenue
New York, N. Y. 10022

A 000125

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In re

INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,

Debtors,

JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,

Plaintiffs,

-against-

ESGRO, INC.,

Defendant.

----------X

COMPLAINT

Plaintiffs, JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of the above capitoned debtor complaining of defendant Esgro, Inc. ("Esgro") allege:

1. On May 22, 1974, Interstate Stores, Inc. and 188 subsidiary corporations, including White Front Stores, Inc. ("White Front") filed petitions under Chapter XI, Section 322 of the Bankruptcy Act, and thereafter, an amended petition for reorganization pursuant to the provisions of Chapter X of the Bankruptcy Act was filed on June 13, 1974. Said amended petitio was thereafter approved by order of this Court dated June 13, 1974. Pursuant to said order plaintiffs were appointed, have qualified and are now acting as the Trustees of the captioned debtors.

FIRST CLAIM

2. By agreement dated December 1, 1970 debtor White Front and Esgro entered into an agreement amending a prior agreement dated December 1, 1962, as amended, providing for the operation by Esgro of certain leased departments known as Residential Interior Departments within various stores known as White Front Discount Department Stores. Said agreement was amended from time to time and, said agreement as amended, is hereinafter referred to as the Residential Interior Department Agreement.

3. Under the terms of the Residential Interior Department Agreement, Esgro, as compensation for the operation of said Residential Interior Departments, was required to pay to White Front:

(a). 7-1/2 per cent of the gross sales (as defined in said agreement) of said departments ("percentage compensation") for the previous month on or before the 20th day of each month; and

(b) $4.50 per square foot of selling space of all the Residential Interior Departments ("minimum annual compensation") less the amount of percentage compensation theretofore paid during the year, said amount being payable on or before the 25th day of the first month following the end of each license year.

4. The Residential Interior Department Agreement further provided that the minimum annual compensation should be prorated for that portion of a license year for which said license was in effect if a license for a particular Residential Interior

Department either commenced after the beginning of a license year or terminated at a time other than the end of a license year.

5. The Residential Interior Department Agreement further provided that a license year was to be deemed to be a twelve month period ending April 30, except that the first license year would commenced as of the date of the opening of each of said Residential Interior Departments and end the following April 30th, except that, as to the existing White Front Stores, the minimum annual compensation for the Residential Interior Departments located within said stores would commence on June 3, 1971 with respect to some of said stores, on July 3, 1971 as to certain other stores, and on August 2, 1971 as to still other stores.

6. Between July and October 1, 1971, Esgro commenced the operation of Residential Interior Departments in thirty-three White Front Stores and continued operating said departments pursuant to said Residential Interior Department Agreement until December 8, 1972, when the licenses granted pursuant to said agreement were, pursuant to the terms of said agreement, terminated by White Front by reason of Esgro's default thereunder. Subsequent to December 8, 1972, Esgro continued to occupy the areas within the White Front Stores until at least March 12, 1972, when it filed a petition pursuant to Chapter XI of the Bankruptcy Act and continued to conduct retail selling operations in said areas for varying periods extending, in the case of some of said departments, through May of 1973.

7. The Residential Interior Department Agreement also provided that if Esgro remained in possession of the Residential Interior Departments after termination, all of the terms and

conditions of the said agreement would apply.

8. The total selling space contained in the thirty-three Residential Interior Departments was 246,150 square feet and, therefore, the total minimum annual compensation due from Esgro to White Front was $1,107,675.

9. For the license year ending April 30, 1972, Esgro paid White Front a total of $249,747.74 as percentage compensation and for the same period a total of $932,593.28 was due from Esgro to White Front as minimum annual compensation, which amount, less the $249,747.74 in percentage compensation paid, although payable by Esgro to White Front on May 25, 1972, Esgro failed and refused and continues to fail and refuse to pay to White Front.

10. For the period May 1, 1972 through December 8, 1972, the date the licenses granted to Esgro pursuant to the Residential Interior Department Agreement was terminated by White Front by reason of Esgro's defaults, Esgro paid White Front a total of $73,905.94 as percentage compensation and for the same period a total of $958,974.26 was due from Esgro to White Front as minimum annual compensation, which amount, less the $73,905.94 in percentage compensation paid, although payable by Esgro to White Front on May 25, 1973, Esgro failed and refused and continues to fail and refuse to pay to White Front.

11. Subsequent to December 8, 1972, Esgro, despite the termination of the Residential Interior Department Agreement by White Front for Esgro's defaults under said Agreement, continued to operate certain of said departments and between December 9, 1972 and March 12, 1973, the date Esgro filed a petition under Chapter XI of the Bankruptcy Act with the United States District Court for the Central District of California.

12. Esgro has failed and refused to compensate White Front either in the form of percentage compensation or minimum annual compensation for the Residential Interior Departments for the period December 9, 1972 through March 12, 1973.

13. The minimum annual compensation due from Esgro to White Front for the period referred to in paragraph "12", after taking into account those White Front Stores which closed during said period, is $172,302.88.

14. By reason of the foregoing, Esgro is indebted to White Front and, therefore, to the plaintiffs, in the amount of (a) $682,845.54, plus interest from May 25, 1972, in respect of the minimum annual compensation due under the Residential Interior Department Agreement for the period ending April 30, 1972; (b) $885,068.32, plus interest from May 25, 1973, in respect of the minimum annual compensation due under the Residential Interior Department Agreement for the period May 1, 1972 through December 8, 1972; and (c) $172,302.88, plus interest from May 25, 1973, in respect of minimum annual compensation due under the Residential Interior Department Agreement for the period December 9, 1972 and March 12, 1973.

SECOND CLAIM

15. The Trustees repeat and reallege the allegations contained in paragraphs "2" through "8" hereof.

16. During the months of August, September, October, November and December of 1972 and January of 1973, Esgro realized gross sales of $208,572.93, $239,689.73, $469,614.74, $347,853.25, $96,886.11 and $59,957.06, respectively, or a total of $1,422,573.82 in the Residential Interior Departments.

17. Under the terms of the Residential Interior Department Agreement, a total of $106,693.04 was due and owing from Esgro to White Front as percentage compensation in respect of the gross sales referred to in paragraph "16" above, which amount Esgro has failed and refused and continues to fail and refuse to pay to White Front.

18. By reason of the foregoing, Esgro is indebted to White Front and, therefore, to plaintiffs in the amount of $106,693.04.

THIRD CLAIM

19. The Trustees repeat and reallege the allegations contained in paragraph "2" through "8" hereof.

20. Under the terms of the Residential Interior Department Agreement, Esgro was required to reimburse White Front for expenses incurred and amounts paid by White Front on Esgro's account for advertising expenses in respect of the Residential Interior Departments and was required to reimburse White Front for other monies advanced by White Front on Esgro's behalf.

21. Between July of 1972 and January of 1973, White Front advanced a total of $215,494.34 for advertising and other miscellaneous expenses and $2,037.96 in respect of premiums for public liability and property damage insurance on Esgro's behalf, which amount Esgro has failed and refused to pay to White Front although due demand therefor has been made.

22. By reason of the foregoing, there is due and owing from Esgro to White Front and, therefore, to the plaintiffs, a total of $217,532.30.

FOURTH CLAIM

23. Esgro has filed with plaintiffs herein Claim No. 7273A in the amount of $38,758,972.00 in respect of claims allegedly arising out of the execution and performance of the Residential Interior Department Agreement.

24. Plaintiffs object to and seek to expunge said Claim No. 7273A in its entirety, and hereby object to said claim upon the following ground:

(a) Upon information and belief, no false representations were made nor were any relied upon by Esgro, nor did Esgro sustain any damages as alleged in the Proof of Claim.

(b) By agreement dated November 29, 1963, the terms of which were expressly incorporated into the agreement dated December 1, 1970 referred to paragraph 3(B) of the Proof of Claim, it was agreed that the White Front debtors had the right to terminate any of the leases pursuant to which the White Front Discount Department Stores were operating "in good faith for economic conditions or good business reasons." Upon information and belief, the decision to close the White Front Discount Department Stores in December of 1972 and thereafter was made in good faith for economic conditions or good business reasons.

(c) Upon information and belief, no decision was made to sell or close substantially all or a majority of the White Front Discount Department Stores as alleged in paragraphs 3(D) and 3(F) of the Proof of Claim.

(d) Upon information and belief, Esgro was incurring substantial losses as a result of its operation of Residential Interior Departments in the White Front Discount Department Stores and, therefore,was not damaged by their closing.

(e) Upon information and belief, in or about November of 1972, and for some time prior thereto, Esgro and its various affiliates were in breach of various provisions of the agreements pursuant to which the Residential Interior Departments were operated in the White Front Discount Department Stores. By Notice dated November 20, 1972, Esgro was notified by the White Front debtors of its various defaults and demand was made that said defaults be cured within fifteen (15) days as provided in the agreements between the parties. Upon Esgro's failure to cure said default, it was duly notified by notice dated December 8, 1972 of the White Front debtors' election to terminate the license agreements pertaining to the Residential Interior Departments.

25. By reason of the foregoing, the agreement upon which the Proof of Claim is based was lawfully terminated by the White Front debtors. In any event, the claim asserted in the Proof of Claim is precluded by the terms of the agreements between Esgro and the White Front debtors and is without basis in fact or in law.

WHEREFORE, plaintiffs seek the entry of an order (i) directing the entry of judgment against Esgro:

A. On the First Claim, in the amount of:

(a) $682,845.54 plus interest from May 25, 1972;

(b) $1,057,371.20 (less any amount allowed in respect of the Second Claim) plus interest from May 25, 1973.

B. On the Second Claim, in the amount of

$106,693.04 plus appropriate interest.

C. On the Third Claim, in the amount of $217,532.30 plus appropriate interest;

(ii) expunging Claim No. 7273A of Esgro, Inc. in its entirety and (iii) awarding them costs and disbursements of this action and (iv) granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
October 20, 1976.

SHEA GOULD CLIMENKO & CASEY

By _____
A Member of the Firm
Attorneys for the Trustees
330 Madison Avenue
New York, New York 10017
212-661-3200

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re:	:	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	
Debtors,	:	
JOSEPH R. CROWLEY and HERBERT B. SIEGEL, Trustees of Interstate Stores, Inc., et al.,	:	ANSWER TO COMPLAINT OF TRUSTEES
Plaintiffs,	:	
-against-	:	
ESGRO, INC.,	:	
Defendant.	:	

Claimant and defendant California Wholesale Electric Company, formerly known as "Esgro, Inc." and referred to hereinafter as "Esgro" responds to the "Complaint" of Joseph R. Crowley and Herbert B. Siegel, Trustees of the above-entitled debtors and admits, denies and alleges as follows:

1. Answering paragraph 1 thereof alleges that it does not have sufficient information or belief to answer the allegations contained therein and on that ground denies generally and specifically each and every allegation contained therein.

FIRST ALLEGED CLAIM

2. Answering paragraphs 2, 3, 4 and 5 thereof, alleges that the Residential Interior Departments agreement referred to and the various prior agreements and amendments thereto were in written form and are the best evidence of

their terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

3. Answering paragraph 6 thereof, admits that between July 1971 and October 1, 1971, Esgro commenced retail operations in Residential Interior Departments in 33 White Front Stores and continued retail operations in those departments until late 1972 and early 1973; except as admitted, Esgro denies generally and specifically each and every allegation contained therein.

4. Answering paragraph 7 thereof, alleges that the Residential Interior Departments agreement referred to is the best evidence of its terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

5. Answering paragraph 8 thereof, denies generally and specifically each and every allegation contained therein.

6. Answering paragraphs 9 and 10 thereof, admits that Esgro paid to debtors as percentage compensation under and pursuant to the agreements between the parties with respect to the Residential Interior Departments a total of $249,747.74 for the period ending April 30, 1972 and $73,905.94 for the periods thereafter; except as admitted, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that the sums alleged or any sum or amount whatsoever is owing or due debtors on account of "minimum annual compensations."

7. Answering paragraph 11 thereof, admits that Esgro maintained retail operations in certain of its

Residential Interior Departments during the period from December 9, 1972 to March 13, 1973 and that on March 13, 1973, Esgro filed a petition under Chapter XI of the Bankruptcy Act with the United States District Court for the Central District of California; except as admitted, Esgro denies generally and specifically each and every allegation contained therein.

8. Answering paragraphs 12 and 13 thereof, alleges that no sum or amount is due or owing to debtors with respect to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

9. Answering paragraph 14 thereof, denies generally and specifically each and every allegation contained therein and further specifically denies that the sums and amounts alleged and that any sum or amount whatsoever is due or owing from Esgro to debtors, or any of them.

SECOND ALLEGED CLAIM

10. Answering paragraph 15 thereof, Esgro incorporates herein by this reference its answer to paragraphs 2 through 8, inclusive, of the Trustees' Complaint herein as though set forth in full.

11. Answering paragraph 16 thereof, admits the allegations contained therein.

12. Answering paragraphs 17 and 18 thereof, alleges that no sum or amount is due or owing to debtors with respect

to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that Esgro is indebted to debtors, or any of them, in the amount alleged or in any amount or sum whatsoever.

THIRD ALLEGED CLAIM

13. Answering paragraph 19 thereof, Esgro incorporates herein by this reference its answer to paragraphs 2 through 8, inclusive, of the Trustees' Complaint herein as though set forth in full.

14. Answering paragraph 20 thereof, alleges that the written agreement referred to is the best evidence of its terms, conditions and provisions; except as alleged, Esgro denies generally and specifically each and every allegation contained therein.

15. Answering paragraphs 21 and 22 thereof, alleges that no sum or amount is due or owing to debtors with respect to the Residential Interior Departments, or any other matter, and that to the extent the Court concludes that any sum or amount was due, any such sum or amount was paid or should be deemed paid by virtue of applicable offsets; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that Esgro is indebted to debtors, or any of them, in the amount alleged or in any amount or sum whatsoever.

FOURTH ALLEGED CLAIM

16. Answering paragraph 23 thereof, alleges that the said Claim of Esgro and Esgro's Amended Claim are the best evidence of their claims and allegations.

17. Answering paragraphs 24 and 25 thereof, Esgro alleges that the objections made therein by the Trustees are the best evidence of their content; except as alleged, Esgro denies generally and specifically each and every allegation contained therein and further specifically denies that any of said objections are valid.

AFFIRMATIVE DEFENSES

As in four separate affirmative defenses to each and all of the alleged claims of the Trustees against Esgro herein, Esgro alleges as follows:

FIRST AFFIRMATIVE DEFENSE

18. The above-entitled Court is without jurisdiction to determine the claims of debtors and the Trustees herein against Esgro and the facts and matters in connection therewith since debtors have submitted such claims to the jurisdiction of the Bankruptcy Court for the United States District Court for the Central District of California, said Court continues to have jurisdiction over such claims in connection with Esgro's Chapter XI proceedings and that Court has determined and ordered that such issues are to be tried and determined in connection with proceedings now pending in the Superior Court of the State of California for the County of Los Angeles.

SECOND AFFIRMATIVE DEFENSE

19. Each and all of the matters and facts alleged in the Amended Proof of Claim of Esgro herein are incorporated

herein by this reference as though set forth in full and a copy of said Amended Proof of Claim is attached hereto and labeled as Exhibit "A". By virtue of said facts and matters, the debtors, Trustees and plaintiffs herein have waived and are estopped from making their claims herein and are barred by said doctrines and the doctrine of "unclean hands" from obtaining any judgment and relief herein.

THIRD AFFIRMATIVE DEFENSE

20. With respect to the Residential Interior Departments agreement at issue herein, it was the intention of the parties that no minimum annual compensation would be due for the period ending April 30, 1972 unless debtors made available to Esgro space for the Residential Interior Departments at least one full year prior to April 30, 1972 and debtors did not make such space available for such full year. In addition, Esgro alleges that by virtue of the facts and matters alleged in its Amended Proof of Claim herein, which is Exhibit "A" hereto, debtors prevented and precluded Esgro from conducting operations in its Residential Interior Departments for the year ended April 30, 1973 and that operations in the Residential Interior Departments were not continued under said agreement through April 30, 1973. As a result and consequence thereof, debtors, the Trustees and plaintiffs herein are precluded from obtaining any judgment or relief herein. Further, in the event this Court determines that the said written agreements do not fully or adequately reflect the intention of the parties as alleged herein, Esgro alleges that said written agreements should be reformed to accurately reflect the said intentions of the parties.

FOURTH AFFIRMATIVE DEFENSE

21. Debtors, the Trustees and plaintiffs herein are barred from recovery herein by virtue of the doctrines of waiver, laches and estoppel as a result of their having delayed in making their claims herein.

FIFTH AFFIRMATIVE DEFENSE

22. Debtors, the Trustees and plaintiffs herein are barred from recovery herein by virtue of the breaches of contract and failure of consideration as alleged in the Amended Proof of Claim of Esgro herein (Exhibit "A" hereto).

SIXTH AFFIRMATIVE DEFENSE

23. The agreements between debtors and Esgro contemplated that Esgro would have adequate time to establish and begin its Residential Interior Departments prior to any "minimum annual compensation" period beginning. Despite this fact, debtors did not afford to Esgro an opportunity to begin operations in said departments as early as contemplated by the said agreements nor in a timely fashion and, as a consequence, debtors and Esgro agreed, and debtors' acts and conduct led Esgro to believe, that any "minimum annual compensation" in said departments from said agreements would not begin to accrue until and unless the said Residential Interior Departments were in full operation and selling to the public. As a result of the foregoing, debtors, the Trustees and plaintiffs herein are barred from recovery herein for any and all "minimum annual compensation" on said Residential

Interior Departments for any period prior to the time when said departments were in full operation and selling to the public.

WHEREFORE, Esgro prays that the Trustees and plaintiffs herein take nothing by their Complaint herein and for judgment:

1. Dismissing the Complaint herein;

2. For costs of suit; and

3. For such other and further relief as is just.

DATED: November 4, 1976

GIBSON, DUNN & CRUTCHER
WEIL, GOTSHAL & MANGES

By _____
Arthur L. Sherwood
Attorneys for California
Wholesale Electric Company
(formerly "Esgro, Inc.")

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A 000143

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	AMENDED PROOF OF CLAIM ON BEHALF OF ESGRO, INC. (now known as "California Wholesal Electric Company") Claim No. 7273A
Debtors.	:	

Pursuant to leave having been granted by the Court in the above-entitled matter, California Wholesale Electric Company (formerly known as "Esgro, Inc." and hereinafter referred to as "Esgro") submits the following Amended Proof of Claim with respect to its initial Proof of Claim No. 7273A filed herein on August 27, 1974:

1. The undersgined, Francis J. Esgro, who resides at 2020 Nichols Canyon Road, Los Angeles, California 90046, is the President of Esgro, a California corporation. Esgro maintains its principal place of business at 3237 South Garfield Avenue, Los Angeles, California 90040.

2. The following bankrupt entities in the above-entitled proceedings (hereinafter referred to jointly as the "White Front Debtors") were, at the time of the filing of the petition initiating this case, and still are indebted to this claimant in sums set forth in paragraph 3(P) hereof: White Front Stores, Inc., a California corporation; White Front Costa Mesa, Inc., a Delaware corporation; White Front Downey, Inc., a Delaware corporation; White Front Thousand Oaks, Inc., a Delaware corporation; White Front South Sacramento, Inc., a Delaware corporation; White Front La Mesa, Inc., a Delaware corporation; White Front Oakland, Inc., a Delaware corporation;

White Front San Jose, Inc., a Delaware corporation; White Front Sunnyvale, Inc., a Delaware corporation; White Front Sacramento, Inc., a Delaware corporation; White Front Pleasant Hill, Inc., a Delaware corporation; White Front Fresno, Inc., a Delaware corporation; White Front South San Francisco, Inc., a Delaware corporation; White Front Newark, Inc., a Delaware corporation; White Front Richmond, Inc., a California corporation; White Front Tacoma, Inc., a Washington corporation; White Front Seattle, Inc., a Washington corporation; and White Front Burien, Inc., a Washington corporation; and Interstate Stores, Inc., a corporation.

3. The grounds upon which this claim is asserted and upon which liability on the part of the White Front Debtors is claimed are the following:

(A) On or about December 1, 1970, Esgro and the White Front Debtors entered into an agreement in writing concerning the license of and operation by Esgro of "Residential Interior Departments" in stores operated and to be operated by the White Front Debtors under the name "White Front." Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972. Copies of this agreement and the various amendments thereto were included, as Exhibits "A" through "G", inclusive, in connection with Esgro's initial Proof of Clair herein.

(B) Pursuant to the said agreement, the parties agreed, among other things, that Esgro (or its affiliates) was granted the right and license to operate Residential

Interior Departments concessions in each and all of the stores operated by the White Front Debtors, with certain specified exceptions, for a term extending to 1987. The stores where such right and license was granted are hereinafter sometimes referred to as the "White Front Stores."

(C) During the course and as a part of the negotiations between Esgro and the White Front Debtors with respect to the said agreement, the White Front Debtors represented to and assured Esgro, among other things, that the operations of the White Front Stores and the "White Front" division of debtor Interstate Stores, Inc. ("Interstate") was a healthy and profitable one and that the White Front Debtors fully intended to maintain and expand their chain of White Front Stores during the full term of the Residential Interior Agreement. In addition, in connection with the said negotiations, the White Front Debtors represented to and assured Esgro that Interstate, the "parent company" of the remaining White Front Debtors, was not in danger of financial difficulty and had a net worth of approximately $79 million. In addition, during and throughout 1970 and thereafter, the White Front Debtors published and made public financial statements of Interstate reporting the operations of Interstate (and all of its subsidiaries) on a fully consolidated basis, which showed a net worth of approximately $79 million and which did not note or indicate any financial difficulty of the White Front stores or their operations.

(D) Esgro reasonably relied upon said

representations, assurances and published financial statements of the White Front Debtors in entering into the said agreement and in making and undertaking its extensive commitments and obligations in connection therewith.

(E) From and after the execution of the said agreement, up until at least November 1972, the White Front Debtors continually represented to and assured Esgro that the White Front operation was a profitable and ongoing business and was not suffering from or incurring any undue financial difficulties. In addition, the White Front Debtors, during this period of time, assured and represented to Esgro that they were not considering the closing of any of the White Front Stores.

(F) Esgro reasonably relied upon these assurances and representations in connection with making its investments in time, money and effort to construct, establish and stock its Residential Interior Departments. Esgro did, in fact, pursuant to said agreement, construct, establish and stock Residential Interior Departments in 33 separate White Front Stores located throughout the States of California, Oregon and Washington and constructed, established and stocked three separate warehouses in support thereof.

(G) The said representations and assurances of the White Front Debtors, and each and all of them, were false and untrue and the White Front Debtors knew or should have known of such falsity in that, among other things:

(i) As of December 1970 (i.e., at or about the time of execution of the said agreement), and all times

thereafter and for a substantial period of time prior thereto, the White Front division of Interstate was incurring increasingly severe operating losses and had become unprofitable.

(ii) The internal operating statements for the White Front division of Interstate available to the White Front Debtors at and just before the said agreement was signed showed results for the first nine months of the then current fiscal year as a loss of approximately $6,325,000, before allocation of New York office overhead and provision for Federal income tax.

(iii) It should have been or was clear to management of the White Front Debtors, beginning sometime prior to December 1970, that the financial operations and results of the White Front Stores were so bad and deteriorating so steadily and rapidly that a substantial number (if not all) of said White Front Stores would have to be disposed of or sold.

(iv) At the time of execution of the said agreement, Interstate did not have a net worth of approximately $79 million. Interstate's net worth was substantially below that sum and Interstate knew or should have known of substantial financial problems which it was incurring and which it would incur.

(H) The White Front debtors did not disclose to Esgro or anyone else and instead concealed and kept strictly within the White Front Debtors' knowledge the poor financial results of the White Front operations. As a result, representations and assurances made to Esgro in connection with the said agreement and Esgro's establishment and maintenance of its Residential Interior Departments were

false and misleading and the financial results of Interstate reported to Esgro and to the public were false and misleading.

(I) Continually up until mid-December 1972, the White Front Debtors concealed and failed to disclose to Esgro their intention to sell or close all or substantially all of the White Front Stores and, to the contrary, affirmatively represented to and assured Esgro that such stores would remain open through the entire term of the said agreement.

(J) In reliance upon the truth of said misrepresentations made to Esgro and of the failure by the White Front Debtors to reveal the true facts Esgro continued operations in said White Front Stores and did not make adequate or necessary provisions for the closing of said stores.

(K) On or about November 19, 1972, Esgro first learned of the true intentions of the White Front Debtors with respect to White Front Stores closings and, in order to minimize and mitigate its losses and damages, Esgro determined to close its Residential Interior Departments and informed the White Front Debtors of such determination.

(L) On or about December 12, 1973, the White Front Debtors announced publicly (and thereby informed Esgro) that the White Front Debtors had resolved and determined to close 21 of the 33 said White Front Stores and that such closings would take place in approximately one month.

(M) The White Front Debtors did, in fact, close each and all of the said White Front Stores by mid-1974.

(N) Had Esgro known the true facts concerning the financial status of the White Front operation and of

Interstate or their intentions, Esgro would not have entered into the said agreement and would not have established, maintained or operated its Residential Interior Departments.

(O) The said acts and conduct of the White Front Debtors, and each and all of them, constitute fraud, misrepresentation (intentional or negligent), breach of contract and interference with contractual relations. In addition, should the Court for any reason decline to allow this claim on those grounds, Esgro is entitled to the allowance of such claim on the grounds of mistake (unilateral or mutual) as to the continued existence and viability of the White Front Stores and their financial condition and on that ground, the said agreement is rescindable and Esgro is entitled to recovery of its losses incurred as a result thereof.

(P) As a direct and proximate result of the said acts and conduct of the White Front Debtors, Esgro has been injured and damaged in the following approximate amounts for which this claim is made:

(i) In the amount of $2,300,000 as a result of expenses incurred and lost in connection with the construction and establishment of the Residential Interior Departments and the three warehouses in connection therewith.

(ii) In the amount of $2,200,000 as the loss incurred in liquidating Esgro's Residential Interior Departments inventory, including handling expenses therefor.

(iii) In the amount of $2,300,000 as the book loss incurred by Esgro as a part of its operational Start-up cost of establishing its Residential Interior Departments.

(iv) In the amount of $24 million as lost reasonably anticipated profits from operations by Esgro of its Residential Interior Departments during the term of tne said agreement.

(v) In the amount of $3,200,000 as lost reasonably anticipated profits under the portion of said agreement providing for the supply, by Esgro, to the White Front Debtors, of electrical and plumbing products.

(vi) In the amount of $5 million as additional general damages.

(vii) In the amount of $5 million as exemplary or punitive damages based upon the willful and malicious conduct of the White Front Debtors.

(viii) In an amount which is, as yet, undetermined for costs, interest and attorneys' fees incurred herein and in connection with associated litigation.

(Q) The White Front Debtors, and each of them, during the relevant period in question so controlled and manipulated the affairs which existed among them and with respect to the said agreement that there existed and does exist an identity of ownership among each and all of the White Front Debtors such that to recognize the fiction of their separate existence under the circumstances would sanction fraud and promote injustice. As a result thereof, this claim should be allowed against each and all of the said White Front Debtors, jointly and severally.

4. No judgement has been rendered, as yet, on the claim here set forth.

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5. No payment on this claim has been made, and accordingly, no such payment has been credited or deducted.

6. This claim is not subject to any setoff or counterclaim; however, the White Front Debtors contend to the contrary.

7. No security interest is held for this claim.

8. This claim is a general unsecured claim.

DATED: October 21, 1976

CALIFORNIA WHOLESALE ELECTRIC COMPANY (formerly known as "Esgro, Inc."), a California corporation

By _____
Francis J. Esgro, its President

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	REPLY AFFIDAVIT
Debtors.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DANIEL L. CARROLL, being duly sworn, deposes and says:

1. I am associated with the firm of Shea Gould Climenko & Casey, attorneys for the Trustees of the above captioned debtors. I make this affidavit in connection with the Trustees' motion for an order dismissing the Amended Proof of Claim filed herein by Esgro and, specifically, in response to the affidavit of Arthur L. Sherwood, sworn to November 12, 1976 ("Sherwood Aff.")

2. There are certain facts involved in the instant motion that are not disputed. First, there is no question that Esgro definitely knew of the 1970 operating results of White Front in early July of this year* when it received the copies of the White Front operating statements.** Yet nothing was said by Esgro or its attorneys concerning its intention to rely upon

*Mr. Sherwood incorrectly states that he received these financial statements within a "few days" preceding the Esgro deposition (Sherwood Aff. ¶6). The financial statements were delivered to Mr. Sherwood on or about July 1 when I traveled to California to inspect certain of Esgro's documents and to prepare for Esgro's inspection of White Front's documents. Mr. Esgro's deposition did not take place until July 21.

** As pointed out in paragraphs 7-8 and 13 of my moving affidavit, it is also clear that Esgro knew generally of these poor operating results long before July of this year.

alleged misrepresentations concerning White Front's financial condition in 1970 until after crucial depositions had been completed by the Trustees in late July although it is now clear that Esgro knew at that time that it would attempt to amend its proof of claim. Second, it is clear that Esgro waited until the eve of trial, when discovery was no longer possible, before making any attempt to amend its proof of claim.

3. It should be pointed out that Esgro's cross-complaint in the California proceeding is substantially the same as the original Proof of Claim filed herein. A copy of that cross-complaint is annexed hereto as Exhibit A. Like the original Proof of Claim, the only "representation" referred to in that pleading is the alleged representation that "the said White Front Stores would remain open through the entire term of the said agreement, as amended, and also that additional stores would be opened by cross-defendants [i.e., White Front]" (Ex. A, ¶9) and that White Front "falsely and fraudulently represented to cross-complainants [i.e., Esgro] that the intention of cross-defendants was only to sell a certain few of the White Front Stores located in the Pacific Northwest states and to sell or close no other White Front Stores than these" (Ex. A, ¶10). It is now apparently Esgro's position that these "more general and encompassing allegations with respect to store closings" should be deemed to include the new allegation that specific representations were made to Esgro in 1970 with respect to the actual financial condition of White Front at the time (Sherwood Aff. ¶5). This argument does not stand up even upon a cursory analysis. The fact that White Front was losing money in late 1970 is not disputed. Although this fact might conceivably be deemed relevant to the question of White Front's alleged intention to close stores in

1970, it has no bearing on what was said during the course of negotiating the December 1970 Residential Interior Department agreement with respect to White Front's and Interstate's financial condition, the materiality of any such statements, and Esgro's reliance thereon. These are, I respectfully suggest, entirely different matters.

4. At paragraph 6 of his affidavit, Mr. Sherwood states that he "did indicate" to me "both in the course of questions at [the Esgro deposition] and in other discussions ... that Esgro now felt that there had been substantial misrepresentations and omissions with respect to the disclosure of the losses then incurred by Esgro." I categorically deny that anything was said by Mr. Sherwood in this regard until after the deposition of Harry Epstein was completed on July 28, 1976.* This is apparent

*In its memorandum of law (pp. 22,24), Esgro stated I conceded in my moving affidavit that it was clear from questions asked by counsel for Esgro at Mr. Esgro's deposition that "Esgro felt that certain financial information had not been provided to it." The precise portion of my affidavit referred to reads as follows:

> "Again, at no time during the course of Mr. Epstein's deposition did counsel for Esgro indicate that Esgro would take the position that misrepresentations were made to it during the course of the negotiation of the December 1, 1970 Agreement. However, in cross-examining Mr. Esgro, Esgro's counsel for the first time asked certain questions which indicated that Esgro felt that certain financial information had not been provided to it. Immediately following the Epstein deposition, Esgro's counsel, while engaging in a general discussion of the case, stated for the first time that Esgro felt that misrepresentations had been made to it concerning White Front's financial condition." (Emphasis added)

The underscored portion of the above quotation incorrectly referred to Mr. Esgro rather than Mr. Epstein and should have read "in cross-examining Mr. Epstein." Esgro's reliance on this obvious inadvertent error demonstrates, I respectfully suggest, the shallowness of Esgro's argument. Counsel was well aware that it did not at all cross-examine Mr. Esgro and, therefore, there were no questions put to Mr. Esgro by his attorneys that would have indicated that Esgro felt certain financial information had not been provided.

from the fact that Mr. Sherwood is unable to point to any such statement made by him "in the course of the questions" at the Esgro deposition.

5. In paragraph 6 of his affidavit, Mr. Sherwood also refers to my alleged "lack of interest" in questioning Mr. Esgro "about conversations and representations made to him by White Front." This is also inaccurate. Mr. Sherwood annexes to his affidavit as Exhibit A three pages from Mr. Esgro's deposition. At the deposition I was simply trying to avoid going through Esgro's interrogatory answers line by line to determine if Mr. Esgro was aware of any additional details. At the time I had no reason to believe that Esgro would claim that there has been misrepresentations as to White Front's financial condition.

6. In paragraph 7 of his affidavit, Mr. Sherwood claims to have "explicitly informed" me "towards the end" of the Epstein deposition that Esgro believed that there were misrepresentations and a failure to disclose the substantial losses of White Front incurred as of late 1970. In fact, the discussion which Mr. Sherwood is referring to took place after Mr. Epstein's deposition had been completed and after Mr. Epstein had been excused.

7. In paragraph 8 of his affidavit, Mr. Sherwood attempts to excuse his failure to attempt to move to amend his Proof of Claim by stating that he assumed that the "updating and particularization" of the pleadings could be dealt with as part of the pre-trial order. This, however, does not square with his admitted knowledge that the Trustees intended to resist any attempt by Esgro to amend its Proof of Claim. Thus, in response to the contention of Esgro set forth in the pre-trial order, we took the position that we would resist any attempt by Esgro to offer proof in support of those contentions upon grounds substan-

tially identical to those advanced in support of the instant motion.

8. Mr. Sherwood continues to take the position that Judge Cannella at the pre-trial conference held on October 18 gave Esgro carte blanche with respect to an amended proof of claim. This is not correct. At no time during the pre-trial conference did Mr. Sherwood even outline to Judge Cannella the nature of the proposed amendment. Indeed, the way the matter was left on October 18 was that Judge Cannella stated he would leave the question of any amendment up to the judge who would try the case.

9. The Trustees' argument that it will be substantially prejudiced if Esgro's Amended Proof of Claim is permitted to stand is "answered" by Mr. Sherwood by referring to the fact that I declined to resume the deposition of Mr. Esgro on November 5, 1976 (Sherwood Aff. ¶12) and by arguing that the new and additional facts contained in the Amended Proof of Claim have been brought into issue by the allegations contained in the complaint served by the Trustees. It is true that I declined to resume the deposition of Mr. Esgro on November 5 when it was suggested by a Commissioner of the California Superior Court during the course of a settlement conference. The suggestion was made by the Commissioner when I informed him that we had had no discovery on the new allegations of fraud and after Mr. Sherwood declined to reveal any facts in support of these new allegations. The reason I declined to resume the deposition of Mr. Esgro was that I had traveled to California for the sole purpose of attending the settlement conference on November 5 and did not have any documents or papers with me. Also, any such deposition would

have been in violation of Judge Cannella's September 1, 1976 order which directed that all discovery be completed by September 17. In addition, it is my recollection that Mr. Sherwood did not agree that it would be appropriate for Mr. Esgro to be examined on such short notice.

10. It is also true that the Trustees' complaint was not served until October 21, 1976, three days after Judge Cannella had directed that all issues relating to the Residential Interior Department agreement between Esgro and White Front be tried at one time. However, the filing of this complaint did not place in issue the matters raised by the Amended Proof of Claim. The Trustees' complaint in addition to incorporating the previously filed objections to the Esgro claim, consists entirely of a straightforward claim for monies due from Esgro. Although denominated a "complaint," the Trustees' complaint is really in the nature of a counterclaim and a defense or claimed setoff to Esgro's original Proof of Claim. Therefore, Esgro's affirmative defense based upon the Amended Proof of Claim is entirely superfluous. As Esgro's claim was already pending before this Court, there was, therefore, no need to replead it. For this reason, should the Court grant the instant motion, the Trustees will ask that the affirmative defense based upon the Amended Proof of Claim be dismissed, or, at least be deemed modified to refer to the original Proof of Claim rather than the Amended Proof of Claim.

DANIEL L. CARROLL

Sworn to before me this
16 day of November, 1976.

Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Term Expires [illegible]

A 000158

A 000159

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Attorneys for Defendants and Cross-Complainants Esgro, Inc. and Triumph Sales, Inc.

ORIGINAL FILED
JUL 27 1978
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

WHITE FRONT STORES, INC., etc., et al.,

Plaintiffs,

vs.

ESGRO, INC., etc., et al.,

Defendants.

NO. C 50105

SUMMONS ON CROSS-COMPLAINT

ESGRO, INC., a corporation, and TRIUMPH SALES, INC., a corporation,

Cross-Complainants,

vs.

WHITE FRONT STORES, INC., a California corporation, WHITE FRONT COSTA MESA, INC., a Delaware corporation, WHITE FRONT DOWNEY, INC., a Delaware corporation, WHITE FRONT THOUSAND OAKS, INC., a Delaware corporation, WHITE FRONT SOUTH SACRAMENTO, INC., a Delaware corporation, WHITE FRONT LA MESA, INC., a Delaware corporation, WHITE FRONT OAKLAND, INC., a Delaware corporation, WHITE FRONT SAN JOSE, INC., a Delaware corporation, WHITE FRONT SUNNYVALE, INC., a Delaware corporation, WHITE FRONT SACRAMENTO, INC., a Delaware corporation, WHITE FRONT PLEASANT HILL, INC., a Delaware corporation, WHITE FRONT FRESNO, INC., a Delaware corporation, WHITE FRONT SOUTH SAN FRANCISCO, INC., a Delaware corporation, WHITE FRONT NEWARK, INC., a Delaware corporation, WHITE FRONT RICHMOND, INC., a California corporation, WHITE FRONT TACOMA, INC., a Washington corporation, WHITE FRONT SEATTLE, INC., a Washington corporation, and WHITE FRONT BURIEN, INC., a Washington corporation, INTERSTATE DEPARTMENT STORES, INC., a corporation, and DOES 1 through XXX, inclusive,

Cross-Defendants.

To the Cross-Defendants: A civil cross-complaint has been filed by the cross-complainants against you. If you wish to defend this lawsuit, you must file in this court a written pleading in response to the cross-complaint (or a written or oral pleading, if a Justice Court) within 30 days after this summons is served on you. Otherwise, your default will be entered on application by the cross-complainants and the court may enter a judgment against you for the money or other relief requested in the cross-complaint.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your pleading, if any, may be filed on time.

Dated July 27, 1973 By/ CLARENCE E. CABELL Clerk.

(SEAL) By/ ROBERT TABARES Deputy

NOTICE TO THE PERSON SERVED

☐ You are served as an individual cross-defendant.

☐ You are served as (or on behalf of) the person sued under the fictitious name of: _____

4. You are served on behalf of: Interstate Dept. Stores, Inc.

Under:

- ☒ CCP 416.10 (Corporation)
- ☐ CCP 416.20 (Defunct Corporation)
- ☐ CCP 416.40 (Association or partnership)
- ☐ CCP 416.60 (Minor)
- ☐ CCP 416.70 (Incompetent)
- ☐ CCP 416.90 (Individual)
- ☐ Other:

The word "complaint" includes cross-complaint, "plaintiff(s)" includes cross-complainant(s), and "defendant(s)" includes cross-defendant(s).

A written pleading, including an answer, demurrer, etc., must be in the form required by the California Rules of Court. Your original

pleading must be filed in this court with proper filing fees and proof that a copy thereof was served on each plaintiff's attorney and on each plaintiff not represented by an attorney.

The time when a summons is deemed served on a party may vary depending on the method of service. For example, see CCP 413.10 through 415.40.

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Attorneys for Defendants and
Cross-Complainants Esgro, Inc.
and Triumph Sales, Inc.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

WHITE FRONT STORES, INC., etc., et al.,

Plaintiffs,

vs.

ESGRO, INC., etc., et al.,

Defendants.

NO. C 50105

CROSS-COMPLAINT

ESGRO, INC., a corporation, and TRIUMPH SALES, INC., a corporation,

Cross-Complainants,

vs.

WHITE FRONT STORES, INC., a California corporation, WHITE FRONT COSTA MESA, INC., a Delaware corporation, WHITE FRONT DOWNEY, INC., a Delaware corporation, WHITE FRONT THOUSAND OAKS, INC., a Delaware corporation, WHITE FRONT SOUTH SACRAMENTO, INC., a Delaware corporation, WHITE FRONT LA MESA, INC., a Delaware corporation, WHITE FRONT OAKLAND, INC., a Delaware corporation, WHITE FRONT SAN JOSE, INC., a Delaware corporation, WHITE FRONT SUNNYVALE, INC., a Delaware corporation, WHITE FRONT SACRAMENTO, INC., a Delaware corporation, WHITE FRONT PLEASANT HILL, INC., a Delaware corporation, WHITE FRONT FRESNO, INC., a Delaware corporation, WHITE FRONT SOUTH SAN FRANCISCO, INC., a Delaware corporation, WHITE FRONT NEWARK, INC., a Delaware corporation, WHITE FRONT RICHMOND, INC., a California corporation, WHITE FRONT TACOMA, INC., a Washington corporation, WHITE FRONT SEATTLE, INC., a Washington corporation, and WHITE FRONT BURIEN, INC., a Washington corporation, INTERSTATE DEPARTMENT STORES, INC., a corporation, and DOES 1 through XXX, inclusive,

Cross-Defendants.

Defendants and cross-complainants Esgro, Inc. and Triumph Sales, Inc. complain of cross-defendants as follows:

FIRST CAUSE OF ACTION

1. Cross-complainants Esgro, Inc. and Triumph Sales, Inc. are and at all times material herein have been California corporations authorized to do and doing business in Los Angeles, California.

2. Cross-complainants are informed and believe and on that ground allege that White Front Tacoma, Inc., White Front Seattle, Inc. and White Front Burien, Inc. are and at all times material hereto have been Washington corporations doing business in Los Angeles, California, that White Front Stores, Inc. and White Front Richmond, Inc. are and at all times material hereto have been California corporations doing business in Los Angeles, California, that Interstate Department Stores, Inc., White Front Costa Mesa, Inc., White Front Downey, Inc., White Front Thousand Oaks, Inc., White Front South Sacramento, Inc., White Front La Mesa, Inc., White Front Oakland, Inc., White Front San Jose, Inc., White Front Sunnyvale, Inc., White Front Sacramento, Inc., White Front Pleasant Hill, Inc., White Front Fresno, Inc., White Front San Francisco, Inc., and White Front Newark, Inc. are and at all times material hereto have been Delaware corporations doing business in Los Angeles, California.

3. Cross-complainants are unaware of the true names and capacities of defendants Doe I through XXX, inclusive, who are, therefore, sued herein by said fictitious names. Plaintiffs will amend this Cross-Complaint to show their true names and capacities when they are ascertained.

4. Cross-complainants are informed and believe and on that ground allege that at all times material hereto cross-defendan Interstate Department Stores, Inc. ("Interstate") and Does I through X, inclusive, so controlled and manipulated the affairs of each and

all of the remaining corporate defendants that there existed and exists identity of ownership and interest as between Interstate and Does I through X, inclusive, on the one hand, and the remaining corporate defendants on the other hand and to recognize the fiction of separate corporate existence under the circumstances would sanction fraud and promote injustice.

5. Cross-complainants are informed and believe and on that ground allege that at all times material hereto cross-defendants White Front Stores, Inc. and Does XI through XXX, inclusive, so controlled and manipulated the affairs of each and all of the remaining cross-defendants, except Interstate and Does I through X, inclusive, that there existed and exists identity of ownership and interest as between White Front Stores, Inc. and Does XI through XXX, inclusive on the one hand, and the remaining cross-defendants, except Interstate and Does I through X, inclusive, on the other hand and to recognize the fiction of separate corporate existence under the circumstances would sanction fraud and promote injustice.

6. Cross-complainants are informed and believe and on that ground allege that each of the cross-defendants herein acted as the agent of each other cross-defendant in the acts and omissions complained of herein.

7. On or about December 1, 1970 cross-complainants and White Front Stores, Inc. entered into an agreement in writing concerning the license of and operation by cross-complainants of residential interior departments in stores operated by White Front Stores, Inc. Said written agreement was amended, in writing, on several occasions between December 1970 and June 1972, and separate agreements for certain White Front Stores in operation were executed (said agreement of December 1, 1970 together with amendment thereto and the separate store agreements are referred to hereinafter as "the agreement, as amended"), resulting, inter alia, in the following:

(a) Francis J. Esgro was released and discharged from all personal rights and obligations under certain prior agreements, and cross-complainants Esgro, Inc. and Triumph Sales, Inc. undertook and received the obligations and rights of Francis J. Esgro pursuant to such prior agreements;

(b) Cross-complainants or affiliated companies were granted the right and license to operate liquor departments and residential interior departments in each and all of the stores operated by White Front Stores, Inc. or its subsidiaries except for certain specific stores as provided in said agreement, as amended, (such stores where such right and license were granted are hereinafter sometimes referred to as the "White Front Stores"), for a term extending to 1987;

(c) Cross-complainants and cross-defendants agreed to terminate cross-complainants' said liquor departments only on certain terms and conditions.

8. Cross-complainants are informed and believe and on that ground allege that sometime prior to December 1970, cross-defendants came to the conclusion and decided to either sell or close all or substantially all of the said White Front Stores and further concluded and decided that should cross-defendants sell such White Front Stores or any of them to another such sale would not be made subject to the said agreement, as amended, between cross-complainants and White Front Stores, Inc.

9. Continually since said conclusion and decision of cross-defendants until November 1972 cross-defendants concealed and omitted to disclose to cross-complainants their said intention, conclusion and decision but rather represented to and assured cross-complainants that the said White Front Stores would remain open

through the entire term of the said agreement, as amended, and also that additional stores would be opened by cross-defendants which stores would also become subject to the said agreement, as amended.

10. On or about December 1, 1970, in written amendments to the said agreement dated December 1, 1970 and on several other occasions and in connection with other amendments to the said agreement subsequent thereto, cross-defendants falsely and fraudulently represented to cross-complainants that the intention of cross-defendants was only to sell a certain few of the White Front Stores located in the Pacific Northwest states and to sell or close no other White Front Stores than these. In connection with said writt amendments to the said agreement and in order to induce cross-complainants to enter into said amendments to the said agreement and to continue to operate departments in the said White Front Stores, cross-defendants intentionally concealed and omitted to disclose their real and true intentions, conclusions and determinations, as alleged hereinabove.

11. Cross-complainants are informed and believe and on that ground allege that in or before early October 1972 cross-defendants determined and resolved to close and cease business in a majority of the said White Front Stores.

12. Despite said determination and resolution and its anticipated and expected severe and adverse effect on cross-complainants' business, cross-defendants failed and refused to disclose to cross-complainants such determination and resolution but rather, in order to induce cross-complainants to continue to operate departments in all of said White Front Stores until the very day of such stores' closing without adequate or necessary provisions being made for a closing, misrepresented to cross-complainants that, among other things, the said White Front Stores would continue operations and that there had been no resolution or determination made that any of the said White Front Stores would be

closed.

13. In reliance upon the truth of said misrepresentation cross-complainants continued operations in said White Front Stores and did not make adequate or necessary provision for the closing of the White Front Stores.

14. On or about December 15, 1973 cross-defendants announced publicly and first informed cross-complainants that White Front Stores, Inc. had resolved and determined to close twenty-one of the thirty-three said White Front Stores and that such closings would take place forthwith.

15. After the date on which cross-defendants had resolved and determined to close said stores but prior to December 15, 1972, in an attempt to avoid their obligations pursuant to the said agreement, as amended, cross-defendants sent to cross-complainants a document entitled "Notice of Default and Notice of Termination of Occupancy" and soon thereafter a document entitled "Notice of Termination of License Agreements." Said Notices purported to claim that cross-complainants had breached their obligations to cross-defendants in the said agreement, as amended, and purported to exercise a right of cross-defendants to terminate the said agreement, as amended.

16. Cross-complainants relied upon the truth of the said misrepresentations of cross-defendants in continuing to expend monies, time and effort in connection with the creation, openings and operations of the said departments in the said White Front Stores, which monies, time and effort would not have been expended had cross-complainants known of the true intentions, determinations and resolutions of cross-defendants with regard to the sale or closing of the said White Front Stores.

17. Cross-defendants did, in fact, close said twenty-one stores and as a result of the closing by cross-defendants of twenty-one of the thirty-three said White Front Stores, cross-

complainants could not economically or adequately operate the said departments in only the remaining twelve White Front Stores and could not continue to operate said remaining departments with the remaining threat of closure and cross-complainants were required to cease and discontinue the operation of the said departments in these remaining White Front Stores also.

18. As a direct and proximate result of the said misrepresentations and fraud of cross-defendants, cross-complainants have been injured and damaged in an amount which is presently uncertain, but which includes the losses and expenses incurred in closing said departments and the lost future profits from the anticipated operations of said departments, and cross-complainants are informed and believe and on that ground allege that said injury and damage exceeds the amount of $30,000,000.00.

SECOND CAUSE OF ACTION

(Breach of Contract)

19. Cross-complainants incorporate by this reference the allegations contained in Paragraphs 1 through 18, inclusive, hereof as though set forth in full.

20. The said unilateral closing of twenty-one of thirty-three said White Front Stores:

(a) Was in breach and a repudiation of the entire said agreement, as amended;

(b) Prevented, frustrated and made impossible the performance of cross-complainants pursuant to the agreement, as amended, and wholly and completely frustrated the objective, purpose and intent of cross-complainants in connection with the said agreement, as amended, and thereby constitutes a material and substantial breach by cross-defendants of the said agreement, as amended;

(c) Was in breach of the implied contract obligation of cross-defendants to cross-complainants to deal in good

hereof as though set forth in full.

27. As a result of the misrepresentations and fraud of cross-defendants, as alleged herein, and the mistake of cross-complainants as to the true intentions, decisions and purposes of cross-defendants, as alleged herein, and the mistake of cross-complainants in believing that the subject matter of the said agreement, as amended, i.e., the White Front Stores, would remain in operation, the said agreement, as amended, should be rescinded subject only to the payment of damages to cross-complainants as sought in the remaining causes of action of this Cross-Complaint.

WHEREFORE, cross-complainants Esgro, Inc. and Triumph Sales, Inc. pray for judgment against cross-defendants and each of them as follows:

1. For compensatory damages in the amount of $30,000,000.00, or as proven at trial, together with interest thereon;

2.. For punitive and exemplary damages in the amount of $5,000,000.00;

3. For judgment of rescission as alleged in paragraph 27 of this Cross-complaint;

4. For costs of suit, including reasonable attorneys' fees; and,

5. For such other and further relief as is just.

DATED: 1973.

GIBSON, DUNN & CRUTCHER

By _____
Arthur L. Sherwood
Attorneys for Defendants and Cross-complainants Esgro, Inc. and Triumph Sales, Inc.

A 000170

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

November 19, 1976

Bruce R. Zirinsky, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Dan Carroll, Esq.
Shea, Gould, Climenko & Casey
330 Madison Avenue
New York, New York 10017

Meryl Wiener, Esq.
Securities & Exchange Commission
26 Federal Plaza
New York, New York 10007

Richard Toder, Esq.
Zalkin, Rodin & Goodman
750 Third Avenue
New York, New York 10017

Re: In re: Interstate Stores, Inc.
Docket No. 76-5034

Gentlemen:

On November 9, 1976, this court took under advisement a motion filed by counsel for Sulmeyer, as Receiver for the Chapter XI Estate of Esgro, Inc., the Plaintiff-Respondent-Appellant, in this action seeking an order suspending and staying the order, issued September 1, 1976, by which the United States District Court for the Southern District of New York, Hon. John M. Cannella, D.J., set aside the order of Hon. E. J. Ryan, Bankruptcy Judge, dated July 23, 1976, which permitted the continued prosecution of a plenary action by White Front Stores, Inc., et al., Plaintiff v. Esgro, Inc., et al., Defendants; Esgro, Inc., et al., Cross-complainant v. White Front Stores, Inc., et al., Cross-defendants, case number C50105, commenced in the Superior Court of the State of California.

The court has directed the undersigned, as Clerk of the court, to advise the counsel for the parties that because of the complexity of the issues and the time required to deal with other court assigned matters, it is necessary to further retain the motion under advisement for several days. It has also been suggested to Hon. Lee P. Gagliardi, as the assigned trial judge for the case from which the motion stems, that favorable consideration be given to postponing the trial of the case in the United States District Court for the Southern District of New York until further assignment and notice.

If, meanwhile, the panel of this court which heard the subject motion on appeal is of the opinion that additional factual material is needed or supplementary arguments or briefs are required, counsel will be duly notified that such a hearing will be held at 2:30 P.M. on Wednesday, December 1, 1976 at the United States Courthouse, Foley Square, Courtroom 1705, New York, New York and counsel in such case will be given notice of such hearing on or before November 26, 1976.

Very truly yours,

A. Daniel Fusaro

A. Daniel Fusaro
Clerk

A 000172

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of November, one thousand nine hundred and seventy-six.

In re INTERSTATE STORES, INC., et al.,

Debtors,

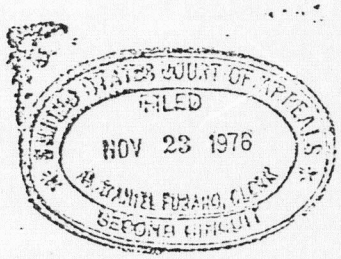
IRVING SULMEYER, as Receiver for the Estate of ESGRO, INC., a Debtor in Chapter XI,

Plaintiff-Respondent-Appellant,

-against-

JOSEPH R. CROWLEY and HERBERT B. SIEGEL, as Reorganization Trustees for WHITE FRONT STORES, INC., et al.,

Defendants-Appellants-Appellees.



76-5034

It is hereby ordered that the motion made herein by counsel for the plaintiff-respondent-appellant, SULMEYER, as Receiver for the Estate of ESGRO, INC., in bankruptcy under Chapter XI,

~~appellant~~ ~~xxxxxxxxxx~~ ~~appellee~~ ~~xxxxxxxxxx~~ ~~petitioner~~ ~~xxxxxxxxxx~~ ~~respondent~~

by notice of motion dated November 9, 1976, to suspend and stay the execution of the order of Honorable John M. Cannella, United States District Judge, dated September 1, 1976, staying the prosecution and commencement of the trial in the California State Court on November 29, 1976 of the action and cross-action entitled "White Front Stores, Inc., et al., Plaintiffs, v. Esgro, Inc., et al., Defendants; Esgro, Inc., et al., Cross-Complainants, v. White Front Stores, Inc., et al., Cross-Defendants, Case No. C50105, commenced in the Superior Court of the State of California, County of Los Angeles, on February 15, 1973, be and it hereby ~~be and it hereby is granted~~ denied is GRANTED;

It is further ordered that the parties proceed in the California State Court on November 29, 1976 as scheduled.

Leonard P. Moore
LEONARD P. MOORE

Robert P. Anderson
ROBERT P. ANDERSON

Murray I. Gurfein
MURRAY I. GURFEIN / Circuit Judges

Motion to dismiss and strike the amended proof of claim is granted.

It is so ordered

11/17/76 Lee P. Gagliardi
U.S.D.J.

Filed: U. S. District Court
S. D. of N. Y.
Nov 24 1976

MICROFILM
NOV 24 1976

[Endorsed on the back of the Order to Show Cause presented to Judge Cannella on November 9, 1976, Requesting the Striking of the Esgro Amended Claim.]

A 000173

A 000174

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Reorganization Nos.
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	74 B 614-802, Inclusive
Debtors.	L.P.G.

ORDER DIRECTING REORGANIZATION TRUSTEES TO SHOW CAUSE WHY ORDER ENTERED ON NOVEMBER 24, 1976 SHOULD NOT BE VACATED.

Upon the annexed affidavit of Bruce R. Zirinsky, sworn to December 2, 1976, in support of the motion of California Wholesale Electric Company, formerly known as Esgro, Inc. (hereinafter "Esgro"), pursuant to Chapter X Rule 10-901, Bankruptcy Rules 922 and 923 and Fed. R. Civ. P. 59 and 60, for an order vacating, or in the alternative, altering or amending the court's order entered November 24, 1976, dismissing the amended proof of claim filed by Esgro on or about November 1, 1976, and sufficient cause appearing therefor, it is

ORDERED that Joseph R. Crowley and Herbert B. Siegel, as Reorganization Trustees for Interstate Stores, Inc., et al. (the "Trustees"), show cause before the undersigned in Room 618 of the United States Courthouse, Foley Square, New York, New York, on the 6th day of December, 1976, at 4:30 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why the court's order entered on November 24, 1976, should not be vacated, or in the alternative, altered or amended, upon the grounds that: (1) all proceedings before this court on the Trustees' objection to the claims of Esgro

were stayed by an order of the United States Court of Appeals for the Second Circuit entered on November 23, 1976, said order directing the parties to proceed to trial of their disputes in the Superior Court of the State of California, County of Los Angeles; (2) the order does not fully and adequately set forth the basis and reasons for the court's decision; and (3) the order was entered by mistake, inadvertence, surprise, or excusable neglect warranting the relief requested herein; and it is further

ORDERED that personal service of a copy of this order and the affidavit upon which it is made upon Messrs. Shea Gould Climenko & Casey, attorneys for the Trustees, 330 Madison Avenue, New York, New York 10017, by personal service on or before 5 P. M. on the 3rd day of December, 1976, shall be deemed good and sufficient notice and service of this order and the proceedings to be had thereon; and it is further

ORDERED that answering papers, if any, shall be personally served upon Weil, Gotshal & Manges, attorneys for Esgro, 767 Fifth Avenue, New York, New York 10022, and filed with the court on or before 4:30 P. M. on the 6th day of December, 1976.

Dated: New York, New York
December 3, 1976

/s/ Lee P. Gagliardi
U.S.D.J.

A 000176

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	Reorganization Nos. 74 B 614-802, Inclusive
Debtors.	L. P. G.

AFFIDAVIT IN SUPPORT OF MOTION TO VACATE ORDER ENTERED ON NOVEMBER 24, 1976

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BRUCE R. ZIRINSKY, being sworn, deposes and states, as follows:

1. I am an attorney at law admitted to practice before this court and am associated with the law firm of Weil, Gotshal & Manges, attorneys for California Wholesale Electric Company, formerly known as Esgro, Inc. (hereinafter referred to as "Esgro").

2. I submit this affidavit in support of Esgro's motion pursuant to Chapter X Rule 10-901, Bankruptcy Rules 923 and 924, and Rules 59 and 60 of the Federal Rules of Civil Procedure, for an order vacating, or in the alternative, altering or amending, this court's order entered on November 24, 1976, striking the amended proof of claim filed by Esgro on or about November 1, 1976. A copy of the order entered by the court on November 24, 1976, is annexed hereto as Exhibit 1.

3. On September 1, 1976, this court, by the Honorable John M. Cannella, United States District Judge, set aside on appeal an order of the Honorable Edward J. Ryan, Bankruptcy Judge, modifying the automatic stay of suits extant in the Interstate Stores, Inc. et al. Chapter X cases, so as to permit the continued prosecution and trial of a plenary action and cross-action between the Chapter X debtors, Esgro and other parties, pending in the Superior Court of the State of California, County of Los Angeles. Judge Cannella's order also directed that a trial of the disputes be conducted before this court.

4. On September 2, 1976, Esgro filed a notice of appeal from the order of September 1, 1976, to the United States Court of Appeals for the Second Circuit. By application of Esgro, the appeal was expedited and argued on October 14, 1976. Although the Court of Appeals has not yet rendered its decision, by order entered on November 23, 1976, the Court of Appeals stayed and suspended Judge Cannella's order of September 1, 1976 and directed the continued prosecution and trial of the disputes in the California Superior Court. A copy of said order is annexed hereto as Exhibit 2.

5. On November 9, 1976, Joseph R. Crowley and Herbert B. Siegel, as Reorganization Trustees for Interstate Stores, Inc. et al. (the "Trustees") applied to this court for an order directing Esgro to show cause why an order should not be entered dismissing and striking the amended proof of claim filed in the Chapter X cases by Esgro on or about Novemer 1, 1976. By order of the same date, Judge Cannella fixed a hearing on the Trustee's application for November 12, 1976.

6. Thereafter, Esgro's attorneys were advised that the trial of the Trustees' objection to Esgro's claims had been reassigned for all purposes to the Honorable Lee P. Gagliardi, United States District Judge. In connection therewith, the hearing on the Trustees' application was rescheduled before Judge Gagliardi for Tuesday, November 16, 1976. Esgro's answering papers were duly filed with the court on November 15, 1976.

7. On November 16, 1976, at 3:00 p.m., a pre-trial conference was held before Judge Gagliardi in chambers. After a lengthy discussion pertaining to the proposed conduct of the trial and the required preparation therefor, Daniel L. Carroll, an associate of the firm of Shea Gould Climenko and Casey, attorneys for the Trustees, raised the question as to the Trustees' motion to dismiss Esgro's amended proof of claim.

8. In response thereto, Judge Gagliardi stated that he did not believe it would make any difference for purposes of proof at the trial, whether or not Esgro's proof of claim was amended and on that basis stated that he would grant the Trustees' motion to strike Esgro's amended proof of claim. Mr. Carroll thereupon queried Judge Gagliardi as to whether or not he should submit an order to the court for signature. Judge Gagliardi responded that he did not believe it necessary that an order be submitted and that he would enter his decision and order on the record on Monday, November 22, 1976, the then scheduled date for commencement of trial before this court.

9. On Friday, November 19, 1976, the Honorable A. Daniel Fusaro, Clerk of the United States Court of Appeals for the Second Circuit, transmitted on behalf of the Court of Appeals, a letter to counsel for the parties, stating in pertinent part, as follows:

> "It has also been suggested to Hon. [illegible] F. [sic] Gagliardi, as the assigned trial judge for the case from which the motion stems, that favorable consideration be given to postponing the trial of the case in the United States District Court for the Southern District of New York until further assignment and notice."

A copy of said letter is annexed hereto as Exhibit 3.

10. On November 22, 1976, the respective attorneys for the Trustees and for Esgro met with Judge Gagliardi in chambers. In addition to the discussion of other matters, Judge Gagliardi advised counsel for the parties that in deference to the request of the Court of Appeals, he was postponing the commencement of the trial. At the conference, absolutely no mention was made with respect to the entry of any order dismissing Esgro's amended proof of claim.

11. As stated above, on the following day, November 23. 1976, the Court of Appeals entered its order suspending and staying Judge Cannella's order of September 1, 1976, and directing the Trustees and Esgro to proceed to trial in the California Superior Court.

12. On November 30, 1976, I was advised by Arthur L. Sherwood, a member of the law firm of Gibson, Dunn & Crtucher, California counsel to Esgro, that the attorneys for the Trustees had asserted in California that an order had been entered by Judge Gagliardi dismissing and striking Esgro's amended proof of claim. Having had no notice or knowledge whatsoever that any order had been entered, I first obtained a copy of said order on that date.

13. This court's order was entered subsequent to the entry by the court of Appeals of its order staying the proceedings before this court on Esgro's claims and should therefore be vacated. Moreover, upon information and belief, the order was inadvertently made, inasmuch as Judge Gagliardi expressly stated that he would enter an order on the record, in the

presence of counsel, stating the reasons for his decision. On that additional basis, the order should be set aside.

14. I am further advised by Mr. Sherwood, that the attorneys for the Trustees have asserted or intend to assert in the California Superior Court that this court's order entered on November 24, 1976, is res judicata as to any motion which Esgro may make in the California Superior Court to amend or supplement pleadings previously filed with that court. The apparent intent of the Trustees in so arguing, is to attempt to preclude Esgro from adducing proof at the trial, material and relevant to its claims against Trustees, a result wholly inconsistent with Judge Gagliardi's decision, which was premised on the stated grounds that the additional facts alleged in the amended proof of claim would be admissible on the basis of the original proof of claim.

15. Inadvertently, however, Judge Gagliardi's order merely states that the:

> "Motion to dismiss and strike the amended proof of claim is granted.
>
> IT IS SO ORDERED."

Thus, the order does not fully and adequately set forth the basis upon which it was made, namely, that the matters raised in the amended proof of claim would in any event be admissible into evidence at the trial based upon the original proof of claim. Inasmuch as there is no written transcript of the proceedings had before Judge Gagliardi in chambers on November 16, 1976, the order, unless vacated, or in the alternative amended or altered to reflect the court's reasons for its decision, is misleading and may be utilized by the Trustees in a tactical effort to preclude Esgro from adducing material and relevant evidence at the trial in the California Superior Court.

16. It is therefore requested that this court's order entered on November 24, 1976, be vacated, or, in the alternative, altered or amended so as to correctly set forth the basis of the court's decision, namely that the facts set forth in the amended proof of claim would be admissable into evidence on the basis of the original proof of claim.

17. No previous application for the relief sought herein has been made to this or to any other court.

18. The reason Esgro proceeds by order to show cause rather than notice of motion is that trial will commence in the California Superior Court on December 3, 1976, and therefore it is urgent that the relief requested be granted as soon as the court's calendar permits, so as to avoid possible prejudice to Esgro.

Bruce R. Zirinsky

Subscribed and sworn to
before me this day of
December, 1976.

Notary Public

New York
County
New York County
March 30, 1973

A000182

A 000183

MEMO. ENDORSED

U.S. DISTRICT COURT FILED

NOV 9 1976 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	Reorganization Nos. 74 B 614-802 Inclusive
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	
Debtors.	ORDER TO SHOW CAUSE

J.M.C.

Upon the annexed affidavit of DANIEL L. CARROLL, sworn to November 9, 1976 and upon all proceedings heretofore had herein in connection with the Trustees application to expunge Claim No. 7273A of Esgro, Inc., and sufficient cause appearing therefor, it is

ORDERED, that California Wholesale Electric Company (formerly known as Esgro, Inc.) show cause before the undersigned at the United States Courthouse, Foley Square, New York, New York, Room 102, on the 12th day of November, 1976 at 10:00 A.M., or as soon thereafter as counsel can be heard, why an order should not be entered dismissing and striking the amended proof of claim filed herein on behalf of Esgro, Inc., upon the ground that said claim was not timely filed and that it would be highly prejudicial to the Trustees to permit the filing of said claim at this time; and it is further

ORDERED, that personal service of a copy of this order and the affidavit upon which it is based upon Messrs. Weil Gotshal & Manges on or before 6 P. M. on the 9th day of November, 1976 shall be deemed good and sufficient service; and it is further

Exhibit A Exhibit B Exhibit C Exhibit D

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re

INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,

Debtors.

ORDER TO SHOW CAUSE
and
AFFIDAVIT

SHEA GOULD CLIMENKO & CASEY
330 MADISON AVENUE
NEW YORK, N.Y. 10017
(212) 661-3200

ATTORNEYS FOR Trustees

Motion is dismissed and the Trustee's amended proof of claim is granted

It is so ordered

11/17/76

U.S. DISTRICT COURT
FILED
NOV 24 1976
S. D. OF N.Y.

MICROFILM
NOV 24 1976

A000184

BEST COPY AVAILABLE

A 000186

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of November, one thousand nine hundred and seventy-six.

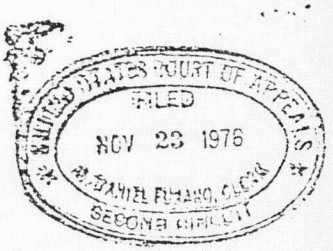
In re INTERSTATE STORES, INC., et al.,
Debtors,

IRVING SULMEYER, as Receiver for the Estate of ESGRO, INC., a Debtor in Chapter XI,

Plaintiff-Respondent-Appellant,

-against-

JOSEPH R. CROWLEY and HERBERT B. SIEGEL, as Reorganization Trustees for WHITE FRONT STORES, INC., et al.,
Defendants-Appellants-Appellees.



76-503

It is hereby ordered that the motion made herein by counsel for the plaintiff-respondent-appellant, SULMEYER, as Receiver for the Estate of ESGRO, INC., in bankruptcy under Chapter XI,

~~appellant~~

by notice of motion dated November 9, 1976, to suspend and stay the execution of the order of Honorable John M. Cannella, United States District Judge, dated September 1, 1976, staying the prosecution and commencement of the trial in the California State Court on November 29, 1976 of the action and cross-action entitled "White Front Stores, Inc., et al., Plaintiffs, v. Esgro, Inc., et al., Defendants; Esgro, Inc., et al., Cross-Complainants, v. White Front Stores, Inc., et al., Cross-Defendants, Case No. C50105, commenced in the Superior Court of the State of California, County of Los Angeles, on February 15, 1973, ~~be and it hereby is granted~~ denied and it is GRANTED;

It is further ordered that the parties proceed in the California State Court on November 29, 1976 as scheduled.

Leonard P. Moore
LEONARD P. MOORE

Robert P. Anderson
ROBERT P. ANDERSON

Murray I. Gurfein
MURRAY I. GURFEIN

Circuit Judges

A 000188

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

A. DANIEL FUSARO
CLERK

- 73

November 19, 1976

Bruce R. Zirinsky, Esq.
Weil, Gotshal & Manges
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Shea, Gould, Climenko & Casey
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New York, New York 10017

Meryl Wiener, Esq.
Securities & Exchange Commission
26 Federal Plaza
New York, New York 10007

Richard Toder, Esq.
Zalkin, Rodin & Goodman
750 Third Avenue
New York, New York 10017

Re: In re: Interstate Stores, Inc.
Docket No. 76-5034

Gentlemen:

On November 9, 1976, this court took under advisement a motion filed by counsel for Sulmeyer, as Receiver for the Chapter XI Estate of Esgro, Inc., the Plaintiff-Respondent-Appellant, in this action seeking an order suspending and staying the order, issued September 1, 1976, by which the United States District Court for the Southern District of New York, Hon. John M. Cannella, D.J., set aside the order of Hon. E. J. Ryan, Bankruptcy Judge, dated July 23, 1976, which permitted the continued prosecution of a plenary action by White Front Stores, Inc., et al., Plaintiff v. Esgro, Inc., et al., Defendants; Esgro, Inc., et al., Cross-complainant v. White Front Stores, Inc., et al., Cross-defendants, case number C50105, commenced in the Superior Court of the State of California.

The court has directed the undersigned, as Clerk of the court, to advise the counsel for the parties that because of the complexity of the issues and the time required to deal with other court assigned matters, it is necessary to further retain the motion under advisement for several days It has also been suggested to Hon. Lee F. Gagliardi, as the assigned trial judge for the case from which the motion stems, that favorable consideration be given to postponing the trial of the case in the United States District Court for the Southern District of New York until further assignment and notice.

If, meanwhile, the panel of this court which heard the subject motion on appeal is of the opinion that additional factual material is needed or supplementary arguments or briefs are required, counsel will be duly notified that such a hearing will be held at 2:30 P.M. on Wednesday December 1, 1976 at the United States Courthouse, Foley Square, Courtroom 1705, New York, New York and counsel in such case will be given notice of such hearing on or before November 26, 1976.

Very truly yours,

A. Daniel Fusaro
Clerk

A 000150

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re

INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,

Debtors.

Reorganization Nos. 74 B 614-802 Inclusive

ANSWERING AFFIDAVIT

----------X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

MARTIN I. SHELTON, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko & Casey, attorneys for the trustees in the above-entitled matter and I make this affidavit in opposition to the motion of Esgro, Inc. ("Claimant") for an order vacating or amending the order of this Court dated November 24, 1976.

2. The trustees moved by order to show cause dated November 9, 1976 to dismiss and strike claimant's amended proof of claim which was not served until November 1, 1976. Three separate grounds were advanced by the trustees in support of the motion: First, there was an improper attempt to assert a completely new claim containing allegations of wrongdoing entirely different from those contained in the original proof of claim and an order had been entered by the Court directing the filing of proofs of claim on or before September 1, 1974 which was later extended to October 1, 1975. The amended proof of claim in this case was not timely since it was not served until November 1, 1976, some thirteen months later. Second, the trustees would have been severely prejudiced

if an amended proof of claim were to be permitted at that late date since at the time the amendment was served a trial had been scheduled by this court for no later than November 18, 1976 and the trustees had not conducted their discovery on the basis of the allegations appearing in the proposed amended proof of claim. Finally, the failure to move to amend the claim long prior to the eve of trial demonstrated a lack of good faith by the claimant.

3. The moving affidavit states that it seeks to have this Court vacate its order of November 24, 1976 or "in the alternative" to amend it "so as to correctly set forth the basis of the court's decision, namely that the facts set forth in the amended proof of claim would be admissible into evidence on the basis of the original proof of claim". In support of the relief sought the moving affidavit also avers that this Court stated on November 16th that it "did not believe it would make any difference for the purposes of proof at the trial whether or not Esgro's proof of claim was amended and on that basis stated that he would grant the Trustees' motion to strike Esgro's amended proof of claim."

4. Your deponent was present at the pre-trial conference that was held before Judge Gagliardi on November 16, 1976 at 3:00 P.M which is referred to in paragraphs 7 and 8 of the moving affidavit and his recollection of the discussion that took place was entirely different from that of counsel for movant. It is your deponent's recollection that at the pre-trial conference held in chambers on November 16, 1976 the court stated that it was going to grant the motion to strike the amendment and that he would rule at

the trial as to just what evidence would be admissible to support claimant's original proof of claim. Your deponent does not recollect the court stating at any point of time during that discussion that "he did not believe it would make any difference for purposes of proof of the trial whether or not Esgro's proof of claim was amended." Your deponent recalls no such ruling nor does he believe that any such ruling was intended to be made by the Court. At that point of time the trial was scheduled to begin on November 18, 1976 and the Court did state that it would not be necessary to submit a formal order for signature and that he would just dictate his decision into the record when the trial would commence. Thereafter, and at the request of Esgro's counsel, the trial was actually adjourned until November 22, 1976 and later the Court of Appeals entered an order on November 23, 1976 which directed the parties to proceed in the California State Court on November 29, 1976.

5. The suggestion in the moving affidavit that the order of this Court which was actually made on November 24, 1976 should be vacated because it was made after the Court of Appeals directed the parties to proceed to trial in California on November 23, 1976 is completely without merit. At no point of time did the Court of Appeals have before it the question as to whether or not an amended proof of claim should be permitted to be filed in these proceedings.

6. Insofar as the California proceeding is concerned, I am advised that Claimant made a motion to file an amendment to its cross-complaint which was substantially identical to the amended

proof of claim that this Court ordered stricken. In opposition to that application, the Trustees argued by their counsel in California not only that this would be contrary to the orders heretofore entered by this Court, but also that it would be barred under California State law because the claim sought to be asserted was entirely different than the claim asserted in the original cross-complaint. I am advised that on December 6, 1976 the Superior Court of California declined to permit the amendment and that one of the grounds upon which it made its decision was that the amendment asserted an entirely different claim than that appearing in the original cross-complaint, would be highly prejudicial to the Trustees who had not had an opportunity to conduct discovery with respect to those issues and, therefore, would not be permitted at this late date. Your deponent is further advised that a jury was chosen yesterday in a California proceeding and that trial was scheduled to commence today.

MARVIN I. SHELTON

Sworn to before me this
7th day of December, 1976

ANNE D'ANDREA
Notary Public, State of New York
No. 41-0953010 Queens County
Certificate filed in New York County
Term Expires March 30, 1978

212-836-5705 - Weiss
-839-7412 - Lee

Dept-'51
974-5651
Room 2

12/6 Gerry w/o pres at this time

14/5

A 000194

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In Re	:	
		Reorganization Nos.
INTERSTATE STORES, INC., formerly known as INTERSTATE DEPARTMENT STORES, INC., et al.,	:	74 B 614-802 Inclusive
	:	MEMORANDUM
Debtors.	:	DECISION

- -x

GAGLIARDI, D. J.

California Wholesale Electric Company, formerly known as Esgro, Inc. ("Esgro"), has moved for an order vacating or, alternatively, amending this court's order entered November 24, 1976 which dismissed the amended proof of claim filed by Esgro on or about November 1, 1976.

At a pre-trial conference held on November 16, 1976 in anticipation of the commencement of trial, then scheduled for the following week, this court orally advised counsel that it had decided to grant the motion of the trustees for Interstate to strike Esgro's amended complaint, and that it would dictate its decision into the trial record. On November 19, 1976 the United States Court of Appeals for the Second Circuit suggested by letter that this court postpone the trial pending the Court of Appeals' determination of a related motion filed by counsel for Esgro, and on November 22, 1976 counsel were notified

of this court's decision to defer to the Court of Appeals and to postpone the trial. On November 23, 1976 the Court of Appeals suspended execution of the September 1, 1976 order of Hon. John M. Cannella and directed that the parties proceed to trial in California Superior Court.

Due to the developments subsequent to this court's November 16 oral notice to counsel of its decision to strike Esgro's amended proof of claim, the reasons underlying its decision were never entered on the record. Accordingly, having given careful consideration to Esgro's application, this court amends its order entered November 24, 1976 to read as follows: "California Wholesale Electric Company (Esgro, Inc.) has filed an amended proof of claim on or about November 1, 1976. It appearing to this court that the amended proof of claim has been filed at a late date, to the possible prejudice of the trustees for the debtor, and it further appearing to this court that the issues sought to be raised by the amended proof of claim might be able to be litigated on the basis of evidence admissible under the original proof of claim, the motion to dismiss and strike the amended proof of claim is granted."

So Ordered.

_____

U.S.D.J.

Dated: New York, New York
December 15, 1976.

A090196 Filed 12/27/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Reorganization Nos.
INTERSTATE STORES, INC., et al.,	:	74 B 614-802, Inclusive
Debtors.	:	

NOTICE OF APPEAL

Notice is hereby given that California Wholesale Electric Company, formerly known as Esgro, Inc. ("Esgro") hereby appeals to the United States Court of Appeals for the Second Circuit from the order of the Honorable Lee P. Gagliardi, United States District Judge, dated December 15, 1976 and entered on December 16, 1976.

Dated: New York, New York
December 27, 1976

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(213) 485-0492

and

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By _____
A Member of the Firm of
Weil, Gotshal & Manges

TO: SHEA, GOULD, CLIMENKO & CASEY
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